

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-1124 of 2022.
Criminal Bail Application No.S-1231 of 2022.

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on office objections.
For hearing of main case.

25.11.2022.

Mr. Ayaz Ali Gopang advocate for applicants.
Mr. Ahmed Ali Jarwar advocate for complainant.
Mr. Nazar Muhammad Memon, Additional Prosecutor General.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Parties are resident of same area but do not see eye to eye with each other on account a of previous skirmish between them. On the day of incident viz. 31.07.2022 at 01:30 pm applicant alongwith co-accused duly armed with guns, lathis etc. accosted complainant party available in front of house of PW Zamir Khan Pathan. No sooner the accused arrived than they started hurling abuses to complainant party and when they were stopped from doing so, they fired upon complainant party injuring as many as four PWs. The role attributed to applicant Muhammad Bux is that he caused lathi blows to complainant and PW Umer Gul Pathan whereas, role ascribed to applicant Gul Muhammad is that he fired at PW Ayaz Khan which hit him on right side of his head. Initially FIR was registered, among others, u/s 324 PPC but subsequently PW Jehangir Pathan succumbed to injuries and Challan has been submitted, among others, u/s 302 PPC.

Learned defence counsel has pleaded for bail on the ground that the bail of the applicants has been dismissed by learned trial Court only on the ground of vicarious liability otherwise their alleged role has not been borne out from any medical record. Complainant and PW Umer Gul did not subject themselves to medical examination and therefore there is no medical evidence to suggest that they have

received any injury. PW Ayaz Pathan is stated to have received an injury not from a firearm but from a hard and blunt substance which too is minor in nature falling u/s 337-A(i) PPC, bailable, and punishable only for two years. The vicarious liability of applicants is a question of further inquiry and in view of contradiction in medical and oral account, the case of applicants requires further inquiry. His arguments have been opposed by learned counsel for complainant stating that applicants are specifically named in FIR and medical certificates have been challenged; applicants are vicariously liable; their presence is admitted at spot; one victim has lost his life and it is immaterial what role has been attributed to them. He has relied upon PLD 1978 SC 236, 1996 SCMR 555, 2010 PCrLJ 914 to support his arguments.

Learned APG has submitted that as far as role of applicants is concerned, since it is not borne out of record he will not oppose their bail. However, he will oppose their bail only on the ground of vicarious liability.

I have considered submissions of parties and perused material available on record. It is stated that applicant Muhammad Bux was arrested during investigation but nothing incriminating was recovered from him. His role of causing lathi blow to complainant and PW Umer Gul is not established from record. Learned APG has submitted a letter of police to the effect that these two PWs have not appeared before the Doctor for medical examination. The role attributed to applicant Gul Muhammad is not established from medical record either. Although he is alleged to have fired at PW Muhammad Ayaz but he has received an injury not from a firearm but from a hard and blunt side weapon which too is minor in nature and bailable. In such circumstances whether applicants can be saddled with vicarious liability or not is a question which can be decided only after recording of evidence. Prima facie, the case of applicants in view of discrepancies in story of FIR and medical record is one of further inquiry and they are entitled to post-arrest bail particularly when they are no more required for further investigation after submission of the Challan.

Accordingly, both the bail applications are allowed and the applicants are granted post-arrest bail subject to their furnishing a

solvent surety in the sum of Rs.100,000/- (one lac rupees) each and P.R Bond in the like amount to the satisfaction of learned trial Court.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE

Irfan Ali