

Date of hearing
01.01.2018.

Order with signature of Judge

1. For orders on office objections.
2. For hearing of bail application.

Mr. Shahbaz Ali Brohi, Advocate for applicant.
Mrs. Rubina Dhamrah, ADPP.

Omar Sial, J: Applicant Rahim Bux Brohi has sought post-arrest bail in Crime No.13/2013, registered under Sections 302, 337-H (ii), 114, 148 & 149 P.P.C. at P.S Dilawar Marfani of District Shikarpur. Earlier, his bail application was dismissed by the learned Additional Sessions Judge-V, Shikarpur, vide order dated 01.11.2017.

Brief facts of the case are that on Haseena Khatoon Tunio lodged an F.I.R at P.S Dilawar Marfani on 12.12.2013 at 1400 hours; she stated in the F.I.R that there is old enmity between the complainant party and the applicant party. Earlier that date, she alongwith her brother-in-law Haibat, one Malookan and one Hakimzadi was sitting on the land which they cultivate. At about 08.00 a.m. nine persons (which included the applicant) appeared on the same armed with various weapons. She identified all the nine accused. As soon as the accused arrived, the applicant instigated his companions by saying that these Tunios are our enemies, therefore, kill them. On his instigation, one of the accused namely, Ayoob and another accused namely, Baz Muhammad fired shots at Haibat with their Kalashnikovs; the remaining accused fired in the air and all of them left the scene. Haibat subsequently died.

I have heard the learned counsel for the applicant, as well as learned ADPP appearing for the State and have also perused the record with their able assistance. The complainant remained absent. My observations are as follows:

- (i) It is clear from the F.I.R that no overt role has been assigned to the applicant. His involvement in the matter is restricted to that of instigating the remaining accused; out of which two accused who are said to have fired upon deceased causing his death. This position is also confirmed by the learned ADPP.
- (ii) Nine members ostensibly of the same tribe, who admittedly have an ongoing enmity with the complainant party have been implicated in this crime, therefore, throwing the net wide cannot be conclusively ruled out at this stage.
- (iii) Further, one accused namely, Ajab Gul who also is allegedly accompanying the accused party but was assigned no overt role, has also been granted bail on 10.07.2017.
- (iv) The learned ADPP while opposing the bail has submitted that the applicant is not entitled to the concession as he has remained an absconder for about four years. In response, the learned counsel for applicant submitted that none of the accused were even aware of the registration of the F.I.R against them and that it is only towards the end of 2017 that they became aware after two of the accused were arrested. Immediately upon becoming aware of the case, they surrendered before the trial Court. In my view, the absconson in itself alone may not be enough to keep a person behind the bars, if otherwise, he has made out a case for the grant of bail.

In view of the above, I am of the view that the case of the applicant falls within the ambit of Section 497 (2) Cr.P.C and hence one of further enquiry. Accordingly, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the amount of Rs.300,000/- (Three hundred thousand rupees) and P.R bond in the like amount to the satisfaction of the trial Court.


JUDGE 11/1/18