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

Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Khadim Hussain Soomro

1st Criminal Bail No.D-31 of 2023

Applicant: Asif alias Pappan son of Ghulam Nabi Dero
Through Mr. Abdul Sattar Hulio, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh.

1st Criminal Bail No.D-33 of 2023

Applicants: 1. Fahad Ali son of Mehboob.
2. Ali Hassan son of Gul Hassan both by
caste Dero
Through Mr. Athar Ali Bhutto, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh.

Date of hearing: 19.12.2023

Date of Judgment: 19.12.2023

O R D E R

MUHAMMAD SALEEM JESSAR, J.- By this common order, we intend to dispose of these bail applications as both are arising out of Crime No.45 of 2023, registered at Police Station Dokri for offence punishable under sections 324, 353, 38, 395, 397, 427, 148, 149, 337-H(2), 224, 225, 337-A(i), 337-F(i) P.P.C and 6/7 ATA. During investigation, the police had arrested applicant Asif alias Papan on 06.07.2023, Fahad Ali and Ali Hassan on 11.07.2023. After completion of usual formalities the challan against the applicants was submitted before the Court having jurisdiction on 12.08.2023, which is now pending for trial before the Court/Judge, Anti-Terrorism, Larkana vide Special Case No.38/2023 (*Re-The State v/s. Zain alias Aitbar Dero and others*). The applicants filed their bail applications before the Court of Judge, Anti-Terrorism, Larkana, which by means of orders dated 28.08.2023 and 11.09.2023 respectively were declined. Hence these bail applications have been maintained.

[Signature]

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2. The main crux of the prosecution case as unfolded by complainant ASI Muhammad Rustam Jarwar of Police Station Dokri are that on 04.07.2023, he alongwith his subordinate staff left the police station for patrolling in the area and after visiting different places when they reached near Mehran Bakery, he received spy information that proclaimed offender namely Zain alias Aitbar Dero, who was wanted in Crime No.11/2023 for offence punishable under sections 401, 324, 353, 34 P.P.C and Crime No.41 of 2023 under sections 395, 427, 457 P.P.C. both crimes registered at Police Station Dokri was standing near Ali Park. Upon receipt of such information, the police party headed towards the pointed place and when they reached over there the person was standing to whom they arrested and on enquiry he disclosed to be Zain alias Aitbar Ali Dero. Such person was arrested, however, he made hue and cry, which attracted a mob including the applicants. The applicants as well as co-accused while deterring the police party from performing their lawful duty had succeeded in getting away said absconder by causing injuries to H.C Muhammad Hassan and snatching wireless mike from Driver P.C Abdul Rasheed. To such effect present F.I.R. was lodged on behalf of the State.

3. Learned counsel for the applicants contended that the person Zain alias Aitbar Dero has no nexus or relationship with the present applicants except the fact that he is being Dero by caste. As far as allegation of causing deterrence in performing the duties of the police, the applicants have committed no offence and the police in order to strengthen the rope of their false case have arrayed them alongwith their community people. They have further submitted that during investigation present applicants Fahad and Ali Hassan (applicants in Criminal Bail No.33 of 2023) were found innocent, therefore, their names were kept in column-2 of the challan, hence accusation of the applicants requires further probe. They have further went on to say that co-accused Ghulam Mustafa alias Saleem and Gul Hassan, who were stated to be co-accused subsequently have been granted post arrest bail by the Trial Court on 28.06.2023, therefore, the case of the applicants is identical to their case, hence prayed for their release on bail. In support of their contentions, learned counsel for the applicants have relied upon the case law reported as **2016 P.Cr.L.J. Note 54 (Javed v/s. The State)**.

4. Learned Deputy Prosecutor General appearing for the State has vehemently opposed the grant of bail to the applicants/accused on the ground that the applicants are nominated in F.I.R., besides have caused



not only deterrence but injuries to the police personnel, besides have robbed away official wireless mike, hence they are not entitled for the concession of bail. He further submitted that in case they may be granted bail, there is great likelihood that they would repeat the crimes. He however, could not controvert the fact that some of the co-accused having similar role have been let off by the police besides nothing has been recovered from their possession.

5. We have heard learned counsel for the applicants, learned Deputy Prosecutor General for the State and have gone through the material made before us on record.

6. No doubt the applicants are nominated in F.I.R., however, co-accused who have been found innocent during investigation were also nominated in the F.I.R., but the prosecution have not assigned any justification regarding their release during investigation nor have brought any concrete material against the applicants showing their active participation except their mere nomination in the F.I.R. Applicant Ali Hassan, against whom allegation of causing butt blow to H.C Muhammad Hassan has been attributed, he was released by the police during investigation under section 497(2) Cr.P.C. Besides applicant Fahad Ali against whom role of snatching/robbed away the official wireless and mike was also let off by the police during investigation. Though instant case had allegedly occurred in brightness of the day and per claim of the police, the applicants are the inhabitants of same vicinity, therefore, the question of their mistaken identity was not attracted even then after getting them implicated have released them during investigation shows that either the incident had not occurred ever or the person who was heading the police party for patrolling in the area was not on duty as claimed. In such eventuality, we are of the considered view that the offence has not been committed in a manner as has been reported. Such behavior and conduct on the part of the prosecution while discharging its legal duty(ies) has casted serious doubt upon its veracity, which entitles the applicants to the concession of bail. Moreover, the co-accused though were nominated in the F.I.R. have been released during investigation and subsequently have been bailed out by the Trial Court on similar footings; hence the applicants deserve to be released on bail on account of parity. Consequently, instant Criminal Bail Applications are hereby allowed. Applicant Asif alias Pappan Dero in Criminal Bail Application No.D-31 of 2023 and applicants Fahad Ali and Ali Hassan both by caste Dero in Criminal Bail Application No.D-33



of 2023 are admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (*Rupees Fifty Thousands only*) each and P.R bonds in the like amount to the satisfaction of the learned trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of either party at trial.


Judge
Judge

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