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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st CrI. Bail Application No. S-531 of 2023

Applicant : Ali Hassan @ Babro Junejo,
through Mr. Ghulam Rasool Narejo, Advocate.

State : Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Complainant : Through Mr. Ajmair Ali Bhutto, Advocate.
(Arshad Ali Bhutto)

1st CrI. Bail Application No. S- 543 of 2023

Applicant : Bakhat Bhutto,
through Mr. Abdul Hakeem Brohi, Advocate.

State : Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Complainant : Through Mr. Ajmair Ali Bhutto, Advocate.
(Arshad Ali Bhutto)

Date of hearing : 21.03.2024.
Date of Order : 21.03.2024.

ORDER.

Muhammad Saleem Jessar, J.- These two bail applications having been filed in Crime No.11/2023, registered with Police Station Garhi Khuda Bux Bhutto, District Larkana, are inter-connected; hence, same are being decided by this common order.

2. Applicants Ali Hassan @ Babro son of Mumtaz Ali Junejo and Bakhat son of Nazeer Hussain Bhutto, seek post arrest bail, after their such request was turned down by the learned Additional Sessions Judge, Ratodero, vide order dated 11.9.2023.

3. According to the case of prosecution, on 11.6.2023, at about 7.45 p.m., the applicants/accused along with co-accused Kashif Kourejo and two unidentified accused, being armed with pistols attacked upon the complainant and PWs, wherein co-accused Kashif Kourejo committed murder of Kamran Ali,

brother of complainant Arshad Ali Bhutto, by making fire upon him, while the applicants and others made ineffective fires upon the complainant party. Hence, such FIR was lodged by the complainant on 13.6.2023.

4. Messrs Ghulam Rasool Narejo and Abdul Hakeem Brohi advocate contended that the applicants are innocent and they have been falsely implicated in this case by the complainant party due to previous dispute over the matrimonial affairs. They submitted that there is inordinate and scandalous delay of 02 days in the lodging of FIR, for which no plausible and cogent explanation has been furnished by the prosecution. They went on to contend that the applicants are not alleged to have fired upon the deceased and the role assigned to both of them is of making ineffective fires upon the complainant party; whereas the main role of firing and committing murder of deceased Kamran Ali is attributed to co-accused Kamran Kourejo, who is also behind the bars. They further contended that the case against the applicants requires further enquiry, as contemplated under subsection (2) to Section 497, Cr.P.C. They, therefore, pray for grant of bail to the applicants. In support of their contentions, they have placed reliance upon the cases reported as *Yaroo v. The State* (2004 SCMR 864), *Muhammad Irfan v. The State and others* (2014 SCMR 1347) and *Ghulam Mujtaba Qadri v. The State and others* (2012 SCMR 662).

5. Learned Addl. P.G, appearing for the State, does not oppose the bail applications, mainly on the ground that no overt act is assigned to the applicants except the ineffective firing.

6. Mr. Ajmair Ali Bhutto, learned Counsel appearing on behalf of the complainant opposes the bail applications vehemently, contending that the applicants are nominated in the FIR with specific role of firing upon the complainant party. He further contended that the applicants have facilitated the co-accused Kashif Kourejo in committing murder of deceased Kamran Ali, therefore, they by sharing common intention are vicariously liable for the murder of the deceased and are not entitled to be released on bail. In support of his contentions, he placed reliance upon the cases reported as *Masood v. The State & another* (2020 PCr.LJ Note 110), *Sarfraz v. The State and 2 others* (2010 YLR 2678), *Muhammad Shahzad v. Muhammad Shahbaz and others* (2020 PCr.LJ 1442), *Alam Khan v. The State and others* (2021 MLD 1541) and *Jaleel Ahmad and others v. The State* (1995 PCr.LJ Note 1583).

7. Heard arguments and perused the record.

8. No doubt, the applicants are nominated in the FIR; however, no overt act is attributed to them and per prosecution case they and unidentified accused are alleged to have fired upon the complainant party, which went ineffective. The main role of making fire upon deceased Kamran Ali is assigned to co-accused Kashif Kourejo, who is said to be confined in jail. The case has been challaned and the charge against the accused has been framed by the trial Court. In view of the role of making ineffective firing alleged against the applicants, the question of sharing common intention and vicarious liability coupled with their participation in the alleged incident are to be proved by the prosecution at trial and at this stage the case of the applicants needs further enquiry within the meaning of subsection (2) to Section 497, Cr.P.C.

9. For the forgoing reasons, in my view, the applicants have made out their case for grant of bail. Consequently, both these bail applications are hereby allowed. Resultantly, applicants Ali Hassan @ Babro Junejo and Bakhat Bhutto are directed to be released on bail on their furnishing solvent surety in the sum of Rs.300,000/- (rupees three lac) each and P.R. Bonds in the like amount to the satisfaction of trial Court.

10. Needless to mention here that the above observations are tentative in nature, which shall not influence the trial Court, in any manner, while deciding the case at final stage.


JUDGE