

77

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Criminal: Ball:Appl: No: S: 447: of 2023

Applicants: Ghulam Murtaza Sanjrani & Other. V/S The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar Single

Dates of Hearing: 27/11/2023

Decided on : 27/11/2023

(a) Judgment approved for
Reporting

☒ YES
☐ NO

27/11/2023

CERTIFICATE

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page
Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is
Approved for reporting.

(iv) Those directions which are not to be used should be deleted.

28

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANO

Cr. Bail Application No. S- 447 of 2023

Applicant(s): Ghulam Murtaza son of Muhammad Pannah, Jawad Hussain son of Ghulam Murtaza and Najaf Ali son of Ghulam Murtaza through Mr. Imdad Ali Malik, Advocate.

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

Complainant: Naveed Ahmed, through Mr. Muhammad Afzal Jagirani, advocate.

Date of hearing: 27.11.2023
Date of order: 27.11.2023

ORDER

Muhammad Saleem Jessar-J. Through this bail application, the applicant seek their admission on pre-arrest bail in crime No.54/2023, registered at Police Station New Foujdari, for offence under sections 302,114,34 PPC. The applicants preferred their bail plea before the court of Sessions, which subsequently was assigned to 3rd Additional Sessions Judge, Shikarpur vide Cr.B.A.No.282 of 2023. The Additional Sessions Judge, after hearing the parties and perusing the material made available before it declined their request by way of order dated 7.4.2023. The case has been challaned by the police on 3.4.2023 which is now pending trial before the court of 3rd. Additional Sessions Judge, Shikarpur *vide Sessions Case No.519 of 2023. Re: The State Muhammad Pannah and others.*

2. The crux of prosecution case as depicted in the F.I.R. lodged by complainant Naveed Ahmed are that he has existing dispute with his brother Ghulam Murtaza (one of the applicant) over landed property. On eventful evening the applicant Ghulam Murtaza duly armed with pistol, his sons namely Muhammad Panah alias Asad Ali alias Baabi with pistol, Jawad Ali alias Chotoo having pistol in his hand and Najaf Ali alias Nanjoo carrying pistol in his hand entered into his house. The applicant Ghulam Murtaza allegedly instigated to other accused not to spare the complainant and commit his qatl-e-amd. On his instigation co-accused Muhammad Panah had allegedly made straight fire from his pistol which hit to wife of complainant namely Laila Naveed which landed at her back and she fell down while raising cry. The complainant party raised hue cry of murder murder then the accused have decamped from the scene.

/

3. After registration of the case police took up investigation. Meanwhile, arrested co-accused Muhammad Panah on 20.6.2023 and an offensive weapon was also shown to have been recovered from him. Hence, this application has been maintained.
4. Learned counsel for the applicant submits that applicant Ghulam Murtaza and complainant are real brothers inter-se while three accused are his sons. The dispute between the parties as admitted over landed property. As far implication of applicants is concerned, learned counsel submits that basically issue arose between the co-accused Muhammad Pannah as well complainant and the applicants have no knowledge even they were not available at the time of alleged incident. In support of this arguments he submits that, if, the applicants had participated in the crime and being armed with deadly weapons might had used the same; however, the complainant has shown mere their presence except instigation of accused Ghulam Murtaza, who too had not used his weapon. He further submits that in such eventuality when the direct-cum main role of causing fire arm injury to deceased is assigned to co-accused Muhammad Pannah who is in custody the case against applicants requires further inquiry. In support of his contentions he places his reliance upon the cases of case *Muhammad Boota v. The State and others of (2014 SCMR-1355)* and *Ehsan v. the State and another (2013 MLD 833)*. In his last, learned counsel submits that applicants have joined the trial proceedings where charge against them was framed on 23.11.2023 and no complaint regarding misuse of concession of bail has been brought on record hence therefore, prayed for grant of bail application.
5. Learned DPG appearing for the State opposes the bail application on the ground that applicants are nominated in the F.I.R with offensive weapons and at their support the co-accused had committed murder of lady Laila Naveed hence, they are not entitle for concession of bail he therefore, prayed for dismissal of the bail application.
6. Mr. Muhammad Afzal Jagirani, advocate for the complainant opposes the bail application on the ground that accused Ghulam Murtaza had instigated to his sons to commit qatl-e-amd of the complainant aims to water the thirst of their anger over landed dispute hence, they are not entitle for the bail. He further submits that offence is heinous one therefore, the applicants are not entitle for the bail. In support of his contentions he places reliance upon the cases of *PLD Mamarras Vs. The State and others (PLD 2009 Supreme Court 385)* and *Haji AHMED KHAN---Petitioner Versus THE STATE and another (2010 MLD 515)*
7. Heard arguments of learned counsel for the applicants and the complainant as well learned D.P.G and perused the record.

967

8. As is evident from the F.I.R the incident is said to have taken place on 19.3.2023 at 9:00 PM (night) whereas; report thereof was lodged on following day viz. 20.3.2023 at 2100 hours (night) i.e. with the day of about 24 hours and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The complainant and the accused are brother as well as nephews inter-se even than he did not got the F.I.R registered promptly. The dispute between the parties is admitted over landed property though all the applicants have been shown to be armed with weapons yet none of them had repeated or caused any injury or scratch to the complainant or other inmate of the house. Per F.I.R the deceased lady had sustained a single fire shot injury on her person which has been assigned to accused Muhammad Panah who is in custody. Mere fact that the offence involved with capital punishment is no ground to withheld concession of bail to accused more particularly when they have not been assigned any specific role or overt act except mere their presence or instigation. The accusation against the applicants is yet to be determined by the trial court after recording evidence of prosecution witnesses. The law relied upon by the counsel for the complainant is to the extent of conspiracy/ abatement which is not the case of prosecution. Since the case has been challaned where charge against the accused has been framed besides no complaint with regard to misuse of the concession extended to them has been brought on record which may warrant dismissal of their bail application. The malafide to the extent of present applicants over landed dispute has been admitted which is basic ingredient for grant of pre arrest bail. Accordingly, and in view of dicta laid down by the honourable Apex Court in the case of *Muhammad Boota v. The State and others of (2014 SCMR-1355) (supra) and Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 Supreme Court 427)*, instant bail application is hereby allowed. Interim pre-arrest bail earlier granted to the applicants vide order dated 15.08.2023, is hereby confirmed on same terms and conditions.

9. The observations made herein above are tentative in nature and would not prejudice the case of either party at the trial. The trial court is directed to expedite the trial of applicant and conclude it, within shortest possible time under intimation to this court.

JUDOE

S Ashfaq/-