

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Appln. No. S-02 of 2019

Date	Order with signature of Judge
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1. For order on office objection.
2. For hearing of bail application.

18-02-2019

Mr. Muhammad Afzal Jagirani, advocate for the applicants.

Mr. Sarfraz Khan Jamali, advocate for the complainant.

Mr. Sharafuddin Kaanhar, A.P.G for the State.

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MUHAMMAD SALEEM JESSAR, J:- Through instant criminal bail application, the applicants Sabir and Abbas Ali seek their release on post arrest bail in Crime No.34 of 2017, P.S. B-Section Shahdadt, Under Sections 395,397,148,149 P.P.C. After registration of case and completion of investigation, the case has been challaned by the police which is now pending trial before the court of I-Additional Sessions Judge, Shahdadt. The applicants preferred their bail plea before the trial court which by means of order dated 26.11.2018 was declined, hence this application.

2. Crux of the prosecution case as depicted by the complainant Muhammad Mashooq Magsi are that the complainant has agricultural land on which Pehlwan Magsi and others have laid claim and have been annoyed towards complainant. On 19.08.2018, the complainant along with Liaquat son of Shakeel Magsi, Naseer and Sajjan both sons of Kuro Khan Magsi were riding on two motorcycles and were proceeded towards Shahadkaot for purchasing fertilizer. Naser had his licensed pistol No.31012156 and cash Rs.100,000/-. At about 10-00 a.m, in the morning when they reached near Larkana van stand on Kambar road, they were intercepted by Pehlwan son of Muhammad Murad

Magsi, who was armed with iron rod, Ghulam Ali son of Abdul Wahid armed with lathi, Sabir son of Ghulam Mustafa armed with lathi, Ali Jan having iron rod, Shafi Mohammad having iron pipe, Abbass Ali having iron rod, Ali Mohammad armed with lathi. Accused Pehlwan inflicted iron rod blow on head of Sajjan, Abbass Ali inflicted iron rod blow on both legs of complainant and elsewhere on his body, Shafi Mohammad inflicted iron pipe blows on the head of Naseer. Ghulam Ali inflicted lathi blow on left shoulder of Naseer, Ali Mohammad inflicted lathi blows on both legs of Naseer. Thus Sajjan and Naseer both were bathed in blood. Accused Pehlwan took out licensed pistol of Naseer which was tucked in fold of shalwar of Naseer. Accused Pehlwan also took out cash Rs.100,000/- from pocket of Naseer. Thereafter all the accused decamped. The injured were shifted to Taluka hospital Shahdaskot, wherefrom they were referred to CMCH Larkana. After medical treatment, the complainant lodged F.I.R against the accused.

3. Learned counsel for the applicants submits that role attributed to applicant Sabir is mere presence, whereas Abbass is alleged to have caused iron bar to P.W Sajjan and Naseer. He further submits that the alleged injuries sustained by the P.W Sajjan are on his non-vital part of body. Learned counsel further submits that that co-accused Ali Jan against whom role of causing injury of iron bar to P.W Sajjan and P.W Naseer Ali is assigned, have been granted pre-arrest bail by the trial court on 14.01.2019, therefore, case of applicants is on same footings. He further submits that in the circumstances, the case of applicants require further inquiry, therefore, they may be enlarged on bail. In support of his contentions, he has placed his reliance upon the case of Dur Muhammad versus The State (1994 P.Cr.L.J 1769), case of Zahid Masih versus The State (2012 MLD 814) and case of Dr. Suhrab versus The State (2011 P.Cr.L.J 208).

4. On the other hand, learned A.P.G. appearing for the State opposes the bail application on the ground that applicants are named in the F.I.R besides

have been assigned specific role of causing injuries to P.Ws and offence with which they have been charged is heinous one, therefore, they do not deserve any concession in shape of their release on bail.

5. Learned counsel for the complainant has also opposed the bail application. Both the counsel have not controverted the fact that co-accused Pehlwan and Ghulam Ali against whom specific role of causing injuries to P.Ws was assigned, have been let off by the police.

6. I have heard the learned counsel for the parties and have gone through the material available on record. Admittedly parties are on strained relations over landed dispute, besides the role attributed to applicant Sabir is of general nature and identical to that of co-accused Ali Jan, who has been granted pre-arrest bail, whereas role of Pehlwan who has been let-off by the police. The injuries sustained by the complainant at the hands of applicant Abbas Ali are concerned, the prosecution has not produced the medicolegal certificate of the complainant, hence the applicant Abbas Ali cannot be connected with commission of alleged offence, the role assigned to him is not supported by the medical evidence. Co-accused against whom the role is either identical or the severe, have been extended extra ordinary relief in the shape of their admission on pre-arrest bail. Question of vicarious liability is yet to be determined by the trial court after recording evidence. Their case in my humble view also requires further inquiry within the meaning of sub section (2) of Section 497 Cr.P.C.

7. Accordingly, instant application is allowed. Applicants are directed to be released on bail after furnishing solvent surety in the sum of Rs.50,000/- each and P.R bond in the like amount to the satisfaction of trial court.

8. Instant bail application stands disposed of.

~~Judge~~

Abdul Salam/P.A