

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 15 of 2019.

Date of hearing 15.03.2019.	Order with signature of Judge
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1. For orders on office objections.
2. For hearing of bail application.

Mr. Abdul Khaliq Bughio, Advocate for applicants.

Mr. Sharafuddin Kanhar, A.P.G.

Advocate for complainant is not in attendance. However, the complainant Naimatullah is present in person.

Muhammad Saleem Jessar, J: Through this application, applicants Jurial and Irshad Ali have sought for their admission to post-arrest bail in Crime No.43/2018, registered at Police Station Farid-abad (*District Dadu*), for offences punishable under Sections 302, 324, 504, 114, 148 and 149 P.P.C. The case after challan is pending trial before the Court of 2nd Additional Sessions Judge, Mehar, vide S.C. No.504/2018, Re; State v. Irshad Chandio and others.

2. The allegation against present applicants as per F.I.R lodged by complainant Naimatullah on 23.08.2018, is that, they duly armed with hatchet and “*danda*” respectively came at place of incident in company of co-accused Muhammad Nawaz, Bilawal and Gulab; out of them Gulab instigated rest of accused and on his instigation, *co-accused* Muhammad Nawaz fired gun shot at Raheemullah, the son of complainant, while co-accused Bilawal fired at niece of complainant, namely, Mst. Amina. The injured were removed to hospital, out of them Raheemullah succumbed to his injury on the way. The *motive* for the incident, as set-out in the F.I.R, is matrimonial dispute between the parties.

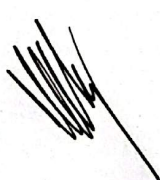
3. Learned counsel for the applicants mainly contended that, F.I.R is delayed for one day; no motive is attributed to the applicants; that no any active role of causing any injury etc. is assigned to applicants except their presence, though they were having hatchet and “*danda*” in

their hands, but they did not use the same in the commission of offence. Per learned counsel, in these circumstances, the question of sharing common intention vicarious liability of present applicants with *co-accused* would be determined at the time of trial. In support of his contentions the learned counsel relied upon case of 2014 SCMR 27, 2016 SCMR 1593, 2018 MLD 552, 2018 YLR Note 135, 2018 P.Cr.L.J 1272 and 2019 YLR Note 24.

4. Conversely, learned A.P.G. appearing for the State assisted by complainant opposed grant of bail in favor of applicants on the ground that they are nominated in the F.I.R with their names and parentage duly armed with hatchet and "*danda*" and have facilitated the principal accused, who committed murder of two innocent persons, as such they are vicariously liable for the murder of two deceased. In support of his contentions, learned A.P.G. relied upon 2014 P.Cr.L.J 1791, 2016 MLD 1498 and 2017 P.Cr.L.J 1383.

5. *No doubt*, the applicants have been nominated in the F.I.R, but no specific role of causing any injury to any of deceased is assigned to them, though they were allegedly having hatchet and "*danda*" respectively, but they did not use the same in the commission of alleged offence. The motive of the alleged incident is also not attributed to present applicants. Those were co-accused Muhammad Nawaz and Bilawal, who are alleged to have caused fires upon both deceased resulting into their death. As such, question of common intention and vicarious liability of the applicants would be determined at trial.

6. A tentative assessment of all the above factors makes the case of applicant one of further enquiry in terms of *subsection (2) of Section 497 Cr.P.C.* Accordingly, the instant bail application stands allowed. The applicants are admitted to bail upon their furnishing solvent surety in the sum of Rs.300,000/- (*Three hundred thousand rupees*) *each* and P.R bonds in the like amount to the satisfaction of trial Court.



7. Before parting with this order, it is made clear that, observations made herein above are tentative in nature and would not prejudice case of either party at trial.

Ansari/*

JUDGE