

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
 Crl. Bail Application No. S- 209 of 2016

Applicant: Qalandar Bux @ Kaloo Narejo through Mr. Ghulam Rasool Narejo, Advocate for the applicant.

Respondent: Miss Rubina Dhamrah, ADPP for the State.

Date of Hearing: 17.11.2017

Date of Order: 17.11.2017

ORDER

Muhammad Saleem Jessar, J. - Applicant Qalandar Bux alias Qaloo Narejo seeks his release on post arrest bail in Crime No. 36/2014 Police Station Kety Mumtaz for offence under sections 302, 364, 147, 148, 149, PPC. The case has already been challaned by the police on 29.12.2014 which is now pending for trial before the Court of Additional Sessions Judge, Ratodero vide Sessions Case No.197 of 2015 re. State v. Wahid Bux alias Kuraro Narejo and others. Prior to this applicant had sought protective bail from this Court on 13.01.2015. He attempted to have pre-arrest bail from the trial Court but the same too was declined. Again he approached this Court by filing 2nd Bail Application No. 20/2015 when he was granted interim pre-arrest bail by this Court on 13.1.2015 and subsequently same was recalled and his application for pre-arrest Bail was declined by order dated 18.8.2015. Therefore, he surrendered voluntarily before the trial Court on 19.08.2015 where his bail application in terms of section 497, Cr.PC was filed but the same met with same fate by order dated 30.09.2015.

2. The crux of the prosecution case as unfolded by complainant Zulfiqar Ali in his F.I.R No. 36/2014 that one Wahid Bux @ Kuraro Narejo was saying

31

to them to sell out 07 jarebs (3 1/2 acres) of land to him else they would be put under boiled water. On fateful day viz. 09.12.2014 the complainant along with his brother Muhammad Panjal, nephew Muzafar Ali and son Saleem (deceased) aged about 20/21 years were standing at their land for its look after when accused persons namely 1.Wahid Bux @ Kuraro with G-3, 2.Wazir with G-3, 3.Lateef with G-3, 4. Hakeem with G-3, 5. Zahid having KK, 6.Riaz having KK, 7.Deedar having KK, 8.Qalandar Bux @ Qaloo having KK, 9.Zahoor with G.3, 10.Raza Muhammad @ Rabail with G-3 and two unknown culprits having KKs in their hand have come. Out of them, accused Wahid Bux alias Kuraro said that they were asked to sell out the captioned land to them whether they are going to sell the same or not. Upon which, they exchanged harsh words to each other and upon force of weapons all the accused in order to commit their Qatl-e-Amd, had abducted all the four persons. When they reached at the Sharif-pur forest adjacent to Dhoro where again accused Wahid Bux @ Kuraro asked regarding sale of land to which son of complainant, Saleem, refused. On his refusal, all the accused had made straight fires upon his son Saleem who fell down while raising cry. Latter, the co-accused had challenged the complainant party if they would not sale out the land to them they will also be dealt in a manner like deceased. To such effect, present F.I.R was lodged. Investigation was carried out and after completion of legal formalities the I.O had submitted the challan in absentia as required by Section 173 read with Section 512, Cr.PC on 29.12.2014. Subsequently, co-accused Wazir Ali was arrested by police while applicant opted to have pre-arrest bail from the trial Court as well as this Court but could not succeed.



3. Mr. Ghulam Rasool Narejo, counsel for the applicant submits that the F.I.R is delayed for about two days though the distance between the Police Station and the place of incident is 4/5 kilometers. He further submits that there is general role against in all 12 accused persons and per postmortem notes, only 07 injuries have been surfaced on the dead body of deceased. He submits that P.Ws who are happened to be closed to the complainant were examined by the IO on 20.12.2014 with delay of about 09 days. He next submits that the complainant though engaged counsel has been avoiding to appear before this Court as well as trial Court. Resultantly, the applicant who is in custody since the date of his surrender i.e. 19.8.2015 is languishing in jail without progress in the trial. He therefore, submits that the case against the applicant requires further enquiry. In support of his contention he has placed reliance upon the case of Sher Alam Khan v. The State and other (2001 MLD 349), Ghulam Mujtaba v. The State & others (2012 SCMR 662), Ahsanullah v. The State (2012 SCMR 1132), Juma Khan alias Sajid and another v. The State (2014 YLR 1919 (Sindh), Allah Bux v. The State (2005 PCr.L.J. 698) and Hafiz Shamroz v. The State and another (2011 YLR 956 (Peshawar).

4. Conversely, Miss Rubina Dhamrah, ADPP for the State has opposed the bail application on the ground that the applicant is nominated in F.I.R and that the deceased was done to them in presence of the complainant party. She however could not controvert the legal flaws left by the prosecution itself and the citations relied upon by the counsel for the applicant at the Bar.

5. The complainant as well as his counsel in spite of notice has chosen to remain absent.

6. I have heard the counsel for the applicant and ADPP for the State and gone through the material made available before me on record. In order to secure the progress of trial, the report was called from the trial Court and that has been furnished by it on 24.01.2017 and 16.11.2017. Per its report, formal charge against the accused Qalandar Bux @ Qaloo has been framed on 13.4.2015 and case was assigned to him by way of transfer on 16.4.2015. Meanwhile co-accused Wazir Ali was arrested and such supplementary challan/subsequent report was filed on 06.4.2016 therefore, amended charge was framed against them on 26.10.2016. The report further reveals that the complainant appeared in person along with PW Muhammad Panjal and his counsel sought adjournments on various dates. The trial Court has further submitted that the delay in conclusion of the case is occasioned due to non production of the accused and non appearance of the complainant and his witnesses. It appears that twelve accused persons including the present applicant have been attributed the effective firearm/shots upon the deceased, therefore, it will be determined by the trial Court whose shot became fatal for the deceased as there are general allegations against all the accused. The complainant has chosen to linger on the proceedings aims to defeat the interest of applicant. The applicant is in custody from the date of his arrest and he may not be kept behind the bars at the sweet will of the complainant for indefinite period.



16

7. The up-shot of the above discussion is that the applicant has been able to make out a case for bail, consequently, instant application is allowed. The applicant is directed to be released on bail on furnishing his solvent surety in the sum of Rs.100,000/- and P.R bond in the like amount to the satisfaction of trial Court.



Judge

Abid H. Qazi/*