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

Crl. Bail Appln. No. S- 478 of 2019.
Crl. Bail Appln. No. S- 536 of 2019.

Date of hearing	Order with signature of Judge
30.12.2019.	

Mr. Wazir Hussain Khoso, Advocate for applicant Shoukat Ali in Crl. Bail Appln. No. S- 478/2019.

Mr. Ahsan Ahmad Quraishi, Advocate for applicant Bajhi Khan in Crl. Bail Appln. No. S- 536/2019.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Complainant is present in person; his counsel is reported to be out of station.

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**Muhammad Saleem Jessar, J:** Captioned two bail applications are outcome of one and same crime i.e. *F.I.R No.57/2019 of P.S Nasirabad (District Kamber-Shahdadkot @ Kamber)*, as such these are disposed of by this common order.

Crl. Bail Appln. No. S- 478/2019 has been filed on behalf of applicant Shoukat Ali, for his admission to *pre-arrest bail*, whereas Crl. Bail Appln. No. S- 536/2019 has been filed on behalf of applicant Bajhi Khan for his admission to *post-arrest bail*.

The allegations against present applicants as per F.I.R lodged by complainant Soonhoro Malano on 19.8.2019, are that applicant Shoukat Ali instigated co-accused persons for commission of alleged offence; while allegation against applicant Bajhi Khan is he was duly armed with pistol and accompanying all the co-accused, but he did not used the pistol in the commission of alleged offence.

Heard learned counsel appearing for the parties and perused the material available on record.

Learned counsel for the applicants mainly contended that, no any active role of causing any injury etc. is assigned to applicants except instigation and their mere presence. Per learned counsel, in these

circumstances, the question of sharing common intention vicarious liability of present applicants with principal co-accused would be determined at the time of trial. Learned counsel files photocopy of challan sheet, which reveals that name of applicant/ accused Shoukat Ali was placed in column No. II and subsequently he was joined as accused upon the directions of Magistrate concerned. Per learned counsel the applicant Bajhi Khan is old age person of about 70 years and he being elder of family/ community has been arrayed as accused in this case falsely. In support of their contentions the learned counsel relied upon case of *Niaz Ali Shah v. The State and another (2015 P.Cr.L.J 766 Lahore)*, *Muhammad Tanveer v. The State through Anees-ul-Afreen (2014 P.Cr.L.J 1096 Islamabad)* *Muhammad Naveed v. The State (2014 P.Cr.L.J 1548 (Sindh), Abdul Rehman v. Javed and 2 others (2002 SCMR 1415) and Qurban Ali v. The State and others (2017 SCMR 279)*.

Conversely, learned D.P.G. appearing for the State opposed grant of bail to applicants/ accused on the ground that applicants have been nominated in the F.I.R with their names and parentage and applicant Bajhi Khan is alleged to be armed with pistol and role of instigation is assigned to applicant Shoukat Ali, as such both of them have facilitated the principal co-accused, who committed murder of an innocent person, as such they are vicariously liable for the murder of deceased. He however could not controvert the fact that applicant Shoukat Ali was let off by police during investigation and that no active role is assigned to the applicants.

*No doubt*, the applicants have been nominated in the F.I.R, but no specific role of causing any injury to deceased is assigned to any of them, though they were allegedly armed with pistols, but they did not use the same in the commission of alleged offence. The applicant Shoukat Ali has acted as *instigator* only, whereas *mere presence* of applicant Bajhi Khan has been alleged. It was co-accused Atta Muhammad who allegedly fired at Arif Ali, the nephew of complainant, which resulted into his death.



In case of *Qurban Ali* (supra), the Hon'ble Supreme Court of Pakistan has granted bail to accused, who had not been attributed any overt act during the occurrence except the role of raising "lalkara" and further held that in such circumstances trial Court had to determine, after recording pro and contra evidence, whether the accused was vicariously liable for the acts of his co-accused and that case was one of further enquiry.

A tentative assessment of all the above factors and the material available on record makes the case of applicants one of further enquiry in terms of subsection (2) of Section 497 Cr.P.C. Accordingly, the captioned bail applications are allowed. Consequently, interim *pre-arrest bail* already granted to applicant Shoukat Ali vide Order dated 12.09.2019, is hereby confirmed on same terms and conditions; while applicant/ accused Bajhi Khan is admitted to *post-arrest bail* upon his furnishing solvent surety in the sum of Rs.200,000/- (*Two hundred thousand rupees*) and P.R bond in the like amount to the satisfaction of learned trial Court.

*Needless*, to mention that the observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

*Ahsan/*\*