

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail A. No.S-950 of 2015.

Ali Akbar

Versus.

The State

Applicant : Ali Akbar

Through Mr. Fayyaz Hussain Sabki, Advocate.

Respondent : The State

Through Mr. Shahid Ahmed Shaikh, A.P.G. alongwith ASI Ghulam Qadir of PS: Bhutto Forest District Matiari.

Complainant : Zafar Ali

Through Syed Tarique Ahmed Shah.

ORDER

Through instant bail application, applicant seeks post-arrest bail in Crime No.17/2014, registered at Police Station Bhutto Forest, under sections 302, 324 and 34 PPC.

2. Precisely, as per F.I.R., allegations are that applicant alongwith c-accused duly armed with deadly weapons committed premeditated murder of Ali Nawaz and Ashiq Ali by firearm injuries; also caused hatchet blow at the head of complainant Zafar Ali.

3. At the outset, learned counsel for the applicant, inter alia, contends that role of the applicant in subject F.I.R. is of only causing injuries to the complainant; that applicant also received injuries one hour before the incident and subsequently he was admitted in the hospital. He relied upon the cases of **Wajid Ali v. State** (2017 SCMR 116), **Israr Ahmed v. The State and another** (2017 PCr.LJ Note 48), **Ajmal alias Aijaz v. The State** (2017 PCr.LJ Note 10) and **Tariq Javed v. Judicial Magistrate Section 30** (2011 YLR 60).

4. On the other hand, learned APG and counsel for the complainant contend that this is a case of two murders; role of the

applicant is not only of causing injuries to the complainant but also facilitation to other co-accused persons thereby two persons lost their lives, hence this is not a case of further inquiry; that examination-in-chief of 06 prosecution witnesses have been recorded by the trial Court but accused by their designed act are not proceeding with the case. Copies of such depositions have been placed on record by learned counsel for the complainant as well diaries, which are taken on record. Counsel for complainant relied upon the cases of **Inayat v. State** (2002 SCMR 129) and **Rehmatullah v. State** (2011 SCMR 1332). Learned APG for the State contends that admittedly another F.I.R. was registered by the applicant but same was declared as cancelled class; such summary is approved by the concerned Magistrate hence that version cannot be considered in favour of the applicant at this stage.

5. *Prima facie*, applicant caused injuries to complainant and in that incident two persons lost their lives while receiving firearm injuries; incident is daytime; 06 prosecution witnesses have been examined by the trial Court but counsel for defense is not ready to proceed with the case. On deposition of P.W. Zafar Ali there is endorsement by the trial Court, which being necessary is reproduced as under:-

“Note

Accused has been taking adjournments respectfully and it appeared to the court that accused has made strategy to linger on the case so as to frustrate the ends of justice. On last date of hearing his counsel without any reason withdrew from the vakalatnama so as to get the adjournment and he was agitating for opportunity to accused to engage new counsel. Accused refused to get advocate on state expenses hence time was granted to him. Today accused disclosed that he has not made arrangement for engaging new counsel. The official witnesses including medical officers and Tapedar have been produced in witness box for the cross examination but accused did not avail of opportunity. In the interest of justice time is against granted to accused on his verbal submission for engaging counsel for cross examination of eye witnesses. In case accused failed the counsel on state expenses shall be provided to him.

Such endorsement categorically shows that defense counsel withdrew his Vakalatnama hence applicant was offered legal assistance through counsel on State expenses but he refused to do so. Under these circumstances, when this is a case of capital punishment, role of the applicant is very much visible, counter various is not in field; however, counter version, if any, cannot be treated as license to grant bail. Accordingly, bail application is dismissed. Trial Court shall conclude the trial of the case within a period of three months.

JUDGE

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