

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1544 of 2016

Applicants: Muhammad Saeed s/o. Karam Elahi
& Muhammad Sakeel s/o Muhammad Saeed,
through Syed Ahmed Ali Shah, advocate.

Respondent: The State, through Mr. Zahoor Shah, APG.

Criminal Bail Application No. 1593 of 2016

Applicant: Jamshed Iqbal s/o Fida Muhammad,
through M/s. Ahmed Ali Dewan &
Mustafa Afzal, Advocates.

Respondent: The State, through Mr. Zahoor Shah, APG.

Complainant: Muhammad Khalil through Mr. Amanullah
Khan Yousuzai, advocate.

Date of hearing: 31.01.2017
Date of order: 31.01.2017

ORDER

Zafar Ahmed Rajput, J:- By this common order, I intend to dispose of both above listed bail applications, as the same have arising out of one F.I.R. bearing No. 208/2016, registered at P.S. Quaidabad, under sections 302, 324, 109, 34 P.P.C.

2. Through Criminal Bail Application No. 1544 of 2016, applicants Muhammad Saeed and Muhammad Shakeel have sought pre-arrest bail in aforementioned crime. Their earlier bail application bearing No. 1212/2016 was heard and dismissed by the learned Ist. Additional Sessions Judge, Malir, vide order dated 22.10.2016. They were admitted to interim pre-arrest bail by this Court on 25.10.2016, now they seek confirmation of their bail. While through Criminal

Bail Application No. 1593/2016, applicant Jamshed Iqbal son of Fida Muhammad seeks post arrest bail in aforementioned crime. His earlier bail application bearing No. 1126/2016 was heard and dismissed by the learned Ist. Additional Sessions Judge, Malir, vide order dated 05.10.2016.

3. Briefly stated the facts of the prosecution case are on 02.08.2016 at about 11:15 p.m. accused Mudasir, his father Ali Muhammad and his cousin have torn the posters affixed in front of the house of complainant in respect of the election campaign of *Anjuman-e-Bashindigan Kala Bagh, Mianwali*, on which some hot words were exchanged and later it was decided that the matter would be settled on next day at 11:30 a.m. On 03.08.2016 at about 09:45 a.m., the complainant and laborer Shakawat Shah were carrying cemented bricks when accused (1) Raza Muhammad @ Chai son of Ghulam Muhammad, (2) his son Sajjad, (3) Ali Muhammad son of Ghulam Muhammad, (4) his son Mudasir, (5) Anwar Iqbal @ Nanhi son of Hayat Muhammad, (6) Jamshed, (7) Javed, (8) Faizan @ Pasran son of Fida Muhammad came at the door of complainant duly armed with pistols and with intention to kill them, started firing. Accused Raza Muhammad made fire shot to brother of the complainant, namely, Ismail, which hit his chest and he fell down. Accused Faizan made fire shot to Muhammad Umar, which hit on his chest and died at the spot, while accused Mudasir made firing upon complainant, who took shelter of pillar and bullets

hit to his laborer Sakhawat Shah on right side of his shoulder. The remaining accused also made fires.

4. Syed Ahmed Ali Shah, learned counsel for the applicants in Criminal Bail Application No. 1544 of 2016 has mainly contended that the applicants are innocent and have falsely, maliciously and for ulterior-motive been implicated in this case by the complainant; that during course of investigation, no incriminating material could be collected against the applicants/ accused, therefore, their names were placed in second column of the challan with blue ink in the report under section 173 Cr. P.C., however, the learned Judicial Magistrate-6th, Malir-Karachi, vide order dated 20-09.2016 took the cognizance against them; that no doubt the grant of pre-arrest bail is an extraordinary relief and in ordinary circumstances it cannot be granted in routine but for sending a person behind the bar there must be some tangible evidence with the prosecution to establish at least a prima facie case against him; that the bail cannot be refused on the basis of vicarious liability, unless it is shown through positive evidence that indeed the accused has played role in the crime in question; that the applicants/ accused in the instant case has not been attributed any role in causing the murder or injuries to injured and only generalized and collective allegation has been leveled against them. In support of his contentions, the learned counsel has relied upon the cases of Ehsanullah v. The State (2012 SCMR 1137), Ghulam Mujtaba Qadri v. The State (2012 SCMR 662), Manzoor Hussain and another v. The State (2011 SCMR 902), Hakim Ali Zardari v. The

State (PLD 1998 SC 1) and Umar Khubaib v. The State and others (2016 P. Cr. L.J.).

5. Mr. Ahmed Ali Dewan, learned counsel for the applicant in Cr. Bail Application No. 1593/2016 has mainly contended that the applicant is innocent and has falsely been implicated in this case due to ulterior-motive; that no specific role has been attributed to applicant/ accused and general allegation of making ineffective firing has been leveled against him, which is doubtful as from perusal of memo of site inspection, it is transpired that there is no pillar in the house of the complainant behind that as per the F.I.R. the complainant took shelter to save himself from alleged firing; that even the applicant has not been connected with the so-called motive part of the prosecution story, hence the guilt of accused requires further inquiry. In support of his contentions, learned counsel has relied upon the cases of Uzair Khan v. State & Others (2016 SCMR 1792), Ghulam Mujtaba Qadri v. The State (2012 SCMR 662) and Master Ghulam Muhammad & others v. The State (SBLR 2010 Sindh 451).

6. On the other hand learned counsel for the complainant has vehemently opposed the applications for grant of pre-arrest bail and post-arrest bail to applicants on the ground that they are nominated in the F.I.R. by name and they shared common intention with main accused in commission of murder of deceased, namely, Muhammad Umar and causing injuries to PWs Ismail and Sakhawat Shah; that the motive has been shown in the F.I.R; that the prosecution

witnesses have fully supported the contents of the F.I.R. and the offence has been committed in a preplan manner, therefore, the applicants are not entitled for the concession of bail.

7. Learned A.P.G. has adopted the arguments of learned counsel for the complainant.

8. Heard the learned counsel for the applicants, complainant and learned A.P.G. as well as perused the material available on record.

9. It appears that applicants Muhammad Saeed and Muhammad Shakeel have been nominated in the crime with the role of instigation to other accused, who allegedly fired at deceased Muhammad Umar and injured PWs Ismail and Sakhawat Shah, while applicant Jamshed Iqbal has been nominated with the role of causing ineffective firing upon the complainant and since during course of investigation no incriminating material could be collected against the applicants Muhammad Saeed and Muhammad Shakeel, they were not sent up by Investigating Officer for trial and their names were mentioned in the second column of the F.I.R. with blue ink, however, the learned Judicial Magistrate 6th, Malir disagreeing with the report of Investigating Officer, took the cognizance of the offence against the said applicants/ accused. Hence, vicarious liability of applicants/ accused to kill the deceased Muhammad Umar and causing injuries to PWs Ismail and Sakhawat Shah could only be established by the trial Court after thorough probe into the matter. Thus, the case of applicants/ accused, in the circumstances,

is one of further inquiry into their guilt covered under subsection (2) of section 497 Cr. P.C. The case last cited by the learned counsel for the complainant, being on different footings, has no application in the instant case of the applicants. Hence, the interim pre-arrest bail, granted to applicants/ accused Muhammad Saeed and Muhammad Shakeel in Criminal Bail Application No. 1544/2016 by this Court, vide order dated 25.10.2016 is hereby confirmed on the same terms and conditions. While applicant Jamshed Iqbal in Criminal Bail Application No. 1593/2016 is admitted to bail subject to furnishing solvent surety in the sum of Rs.1,00,000/- and P.R. Bond in the like amount to the satisfaction of trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits.

JUDGE

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