

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-71 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For Katcha Peshi.

08.05.2017.

Mr. Wazir Hussain Khoso, Advocate for applicants alongwith applicants.

Mr. Shahid Ahmed Shaikh, A.P.G.

None present for complainant.

ABDUL MAALIK GADDI, J Through instant Criminal Revision Application the applicants have prayed the following relief:-

- a. suspend/cancel/withdraw the Non Bailable Warrants issued against the applicants in F.I.R. No.01/2017, lodged at Police Station Badin under Section 302, 504,34 PPC, in alternate grant pre-arrest bail to them.
- b. Direct the learned 1st Judicial Magistrate to comply with the dictum of the Honourable Supreme Court in Shah Murad Case, Criminal Petition No.105-K of 2002, and the directions made in Criminal Misc. Application No.S-165 of 2010, Re-Long Khan & others V/s. The State Order dated 21.09.2012, by the Honourable Chief Justice High Court of Sindh which was circulated to all the District & Sessions Judges of province of Sindh for compliance.
- c. Suspend the operation of NBWs issued against the applicants till final disposal of the instant Petition.
- d. Any other relief this Honourable Court may deem fit and proper under the circumstances of the case.

Brief facts of the F.I.R. as narrated by the complainant are that there was enmity between him and Asad Cheema. On 31.12.2016 at Golarchi town, Malak Akhtar issued threats of murder to the complainant and his brother Naseer. On 03.01.2017 the complainant his brother Naseer and friend Habib Rehman were returning from the Court. When they reached in front of DCO Office they found that

1. Asad son of Muhammad Akram Cheema, 2. Adnan Cheema, 3. Ali Hyder son of

Muhammad Akram Cheema, 4. Amjad Jat, 5. Malak Mazhar son of Dost Muhammad and 6. One unknown were present, having pistols in their hands, at about 1145 hours. Accused Asad Cheema fired on Naseer Shah at his right leg. Adnan Cheema fired at his left legs, Amjad Jat fired at his left knee, Malak Mazhar fired at right leg, while the unknown persons fired at his left leg, Naseer Shah fell on the ground on which Asad Cheema fired upon him which hit him on his back. The accused persons fled away in one Car, Corolla, of Meroon Color, bearing Registration No.ASR-744. The complainant was taking his brother to Hyderabad but he succumbed to the injuries. The complainant lodged such F.I.R.

It appears from the record that after completion of investigation DSP Imdad Ali Solangi submitted report under Section 173 Cr.P.C in the above crime whereby he placed the applicants Amjad Ali and Malik Mazhar Iqbal in column No.2 of the challan sheet but the learned Magistrate did not agree with this report submitted by the I.O of the case and taken cognizance by issuance of the N.B.Ws against the applicants without hearing them.

It is contended by learned counsel for applicants that during investigation the names of the applicants were placed in column No.2 of the challan and when the charge sheet was submitted before the concerned Magistrate he did not agree with the report and directly issued non bailable warrants against the applicants without hearing them. He submits that the order passed by the learned Magistrate in this connection is very harsh and according to him in the first place it is settled law that the Magistrate is supposed to issue bailable warrants, but he did not do so, therefore, he has prayed that the order of issuance of non bailable warrants against the applicants be set aside and non bailable warrants may be converted into bailable warrants so that the applicants may appear before the Trial Court to defend their case. In support of his arguments learned Counsel for the applicants has relied upon the grounds of memo of this Criminal Revision Application and so also has relied upon the orders passed in unreported cases viz. Criminal Petition No.105-K/2002 dated 11.12.2002, Criminal

Miscellaneous Application No.S-165/2010 dated 08.11.2010 and Criminal Miscellaneous Application No.S-208 of 2013 dated 24.09.2013.

It may be mentioned here that notices were issued to the complainant side for today but none has appeared on their behalf.

Learned A.P.G has opposed the submissions as made by the learned counsel for the applicants on the ground that the learned Magistrate while passing the order dated 07.04.2017 has acted in accordance with law.

I have considered the arguments of the learned Counsel for the parties and perused the record.

Indeed there is no cavil with the proposition that the concerned Magistrate is not merely a post office to send up all accused nominated by the police for trial and let-off those placed in column No.2 of the challan, as is held by the Honourable Supreme Court of Pakistan in number of cases. In my view, the Magistrate has to apply his conscious mind and thereafter make up his mind to agree or disagree with the police report. Indeed, he takes cognizance of the offence and not the particular person named in the challan. Consequently, if the Magistrate decides to join the person who has been placed in column No.2 of the challan, he is duty bound to summon him or them. This may also include using coercive process viz. issuance of non bailable warrants and proceedings under Section 87 and 88, Cr. P.C if such person despite efforts did not appear before the Magistrate. Here in this case the applicants, as per record, have been cooperating with the police. Their names were placed in column No.2, then it would be indeed harsh to issue non-bailable warrants against them in the first instance. In such case, the Magistrate should in the first instance issue bailable warrants and if accused is/are not appearing, then coercive method should be adopted. Consequently, in this case, non-bailable warrants issued against the applicants are converted into bailable warrants in the sum of Rs.50,000/- each. The applicants are directed to present themselves before the Trial Court

immediately and if they did not appear before the concerned Court then in the first instance bailable warrants be issued against them then coercive methods may be adopted. In this regard I am fortified with the above mentioned unreported cases.

In view of what I have observed above, the instant Criminal Revision Application stands disposed of in the above terms.

JUDGE