

THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

Crl. Bail Appln: No. S-153 of 2018.

Allah Warrayo.Applicant.

Versus.

The State.Respondents.

Syed Madad Ali Shah, Advocate for Applicant.

Ms. Safa Hisbani, APG.

Mr. Abdul Rasool Abbasi, Advocate for the complainant.

Date of hearing and order 05.06.2018.

O R D E R

IRSHAD ALI SHAH, J. It is alleged that the applicant with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object being armed with hatchets and deadly weapons, by using criminal force, not only committed Qatl-e-Amd of Qamar Deen by causing him fire shot injuries but caused hatchets blows to P.Ws. Azizullah, Jamaluddin and Muhammad Siddique and then went away by making aerial firing to create harassment, for that the present case was registered.

2. On having been refused post-arrest bail by the learned trial Court, the applicant has sought for the same from this Court by making instant bail application under section 497 Cr.P.C.

3. It is contended by the learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party only to settle with him their matrimonial dispute, there is delay of about one day in lodging of FIR, the name of the applicant was disclosed in the FIR after due consultation, there is conflict between medical and ocular evidence and co-accused Ghulam

Sarwar, Habibullah, Mujahid and Khadim Hussain have already been acquitted by the trial Court. By contending so he sought for release of the applicant on bail, as according to him, his case is calling for further inquiry. In support of his contention, he relied upon case of **Zeeshan Ali v. the State**, which is reported at **2018 MLD 317**, (2) the case of **Gul Zaman v. the State**, which is reported at **SBLR 2016 (Sindh) 1291**, (3) case of **Awal Khan and others v. the State**, which is reported at **2017 SCMR 538**, (4) case of **Waris v. the State**, which is reported at **2005 PCr.LJ 373**, (5) case of **Muhammad Aslam v. the State**, which is reported at **2009 YLR 925**, (6) case of **Nigah Hussain Shah v. the State**, which is reported at **2009 PCr.LJ 1101**, (7) case of **Mitho Pitafi v. the State**, which is reported at **2009 SCMR 299**, (8) case of **Imtiaz alias Taj v. the State**, which is reported at **2018 SCMR 344**, (9) case of **Allah Ditto and others v. the State**, which is reported at **2011 PCr.LJ 485**, (20) case of **Amir v. the State**, which is reported at **PLD 1972 SC 277**.

4. Learned counsel for the complainant by rebutting the above contention has opposed to grant of bail to the applicant by contending that the specific role of committing death of deceased Qamar Deen by causing him fire shot injuries is attributed to him, as such his case is distinguishable to that of co-accused who have already been acquitted by the trial Court, and there is no conflict between ocular and medical evidence. In support of his contention he relied upon the case of **Laiq Shah v. the State**, which is reported at **2006 P.Cr.LJ 184** and case of **Ali Hassan & others v. the State**, which is reported at **2011 YLR 846**.

4. Learned APG has also opposed to grant of bail to the applicant by contending that he has remained in unexplained absconsion for noticeable period.

5. I have considered the above arguments and perused the record.

6. The name of the applicant is appearing in FIR with specific allegation that he with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object being armed with hatchets and deadly weapons went over the complainant party, not only fired and killed Qamar Deen but caused injuries to P.Ws. Azizullah, Jamaluddin and Muhammad Siddique with hatchets only to sastisfy their matrimonial dispute with them. The specific role of committing death of Qamar Deen by causing him fire shot injuries is attributed to the applicant. In the said circumstances, it would be premature to say that the applicant being innocent has been involved in this case falsely by the complainant party. The matrimonial dispute between the parties may be there but it may not be a reason for involvement of the applicant in this case falsely at the cost of life of an innocent person and injuries to three more innocent persons. No doubt, there is one day delay in lodging of FIR but it is explained in FIR itself. The delay in lodging of FIR even otherwise could not be resolved in favour of the applicant while deciding his bail application. Medical Officer during course of his examination might have not been able to disclose the nature of weapon used in commission of incident to be pistol or revolver. But this fact, could hardly be taken as a conflict between medical and the ocular evidence. No doubt, co-accused Ghulam Sarwar, Habibullah, Mujahid and Khadim Hussain have already been acquitted by the learned Trial Court but there is no denial

to the fact that they were having different role and their acquittal was recorded by the learned trial Court on the basis of raising of no objection by the complainant party as a result of amicable brotherly failsa. No brotherly faisla has been held by the complainant party with the applicant. It is settled by now that the deeper appreciation of the facts and circumstances is not permissible while deciding the bail application. There appear reasonable grounds to believe that the applicant is guilty of the offence for which he is charged, he as such is not found entitled to be released on bail on point of further inquiry, as such his application for his release on bail is dismissed.

7. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. Case of **Zeeshan Ali** (Supra) was relating to dacoity. All the accused named in case were conjointly liable for the said dacoity. In that context accused was admitted to bail by making an observation that the co-accused have already been acquitted. In the instant case no dacoity has taken place and role attributed to the applicant is diffeeent to that of co-accused who have been acquitted. In case of **Gul Zaman** (Supra) the accused were acquitted mainly for the reason that he was identified under the light of bulb and there was no recovery of bulb from the place of incident. No appeal is being heard. The incident in the present case even otherwise has taken place during daytime. In case of **Awal Khan** (Supra), the main reason for admitting the accused to bail was that two 12-Bore empties were secured from the place of incident, which strengthened the view that two injured had sustained injuries with shot gun and not with kalashnikov. In the instant case no controversy with regard to the fact that the deceased has died of cartridge or bullet injury

is involved. In case of **Waris** (Supra), the accused was admitted to bail mainly for the reason that his identity was yet to be established and the witnesses, who were examined by the trial Court exonerated the co-accused by stating that they are not same who were named in FIR as well as in challan. In the instant case there is no doubt with regard to the identity of the applicant and acquittal of co-accused Ghulam Sarwar, Mujahid, Habibullah and Khadim has been recorded mainly for the reason that there was held brotherly faisla between them. In case of **Muhammad Aslam** (Supra), the accused was admitted to bail mainly for the reason that learned State Counsel raised no objection to grant of bail to him. In the instant case no such concession is extended in favour of the applicant by learned State Counsel. In case of **Nigah Hussain Shah** (Supra), it was held that the abscondence is not enough to prove the guilt of the accused. In the instant case sufficient evidence is collected by the prosecution, which make it believes reasonably that the applicant is guilty of the offence with which he is charged. In case of **Mitho Pitafi** (Supra) it was held that he absconding accused could be admitted to bail, if he has been able to make out a case for grant of bail, on merit. In the instant case applicant has not been able to make out a case for grant of bail on merit. In case of **Imtiaz** (Supra), it was held that the eye witnesses, if have been disbelieved in respect of one accused then they could not be believed in respect of another accused. It was an appeal. No appeal of applicant is being heard now. His role is distinguishable to that of the co-accused who have already been acquitted by the learned trial Court, such acquittal as said above too has been recorded on raising of no objection by the complainant party on account of brotherly faisla. In case of **Allah Ditto** (Supra), the main

reason for admitting the accused to bail was that, there was general allegation. In the instant case specific allegation of causing death of deceased Qamar Deen by causing him fire shot injuries is attributed to the applicant. In case of **Amir** (Supra), the accused was directed to renew his application before Single Judge of the High Court to examine whether the case is falling under section 304 Part I PPC or otherwise. In the instant matter no such issue is to be examined either by this Court or by learned trial Court.

8. Above are the reasons of short order dated 05.06.2018, whereby the bail application of the applicant was dismissed.

J U D G E

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