

THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

CrI. Bail Appln: No. S-151 of 2018.

Ghulam Abbas @ Bagan @ Bago.Applicant.

Versus.

The State.Respondents.

Mr. Ahsan Gul Dahri, Advocate for Applicant.

Ms. Safa Hisbani, APG.

Mr. Aijaz Shaikh, 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 committed Qatl-e-Amd of Shoban by causing him dagger and churri blows, caused injures to P.W. Qadir Bux and complainant Ranjhan with lathi and iron rods 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 the 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 due to personal grudge, there is delay of about seven hours in lodging of the FIR and the role attributed to the applicant in the commission of the alleged incident is only to the extent of making aerial firing, as such his participation in commission of incident is calling for further inquiry. By contending so, he sought for release of

the present applicant on bail. In support of his contention, he relied upon the cases of **Kouro & others v. The State**, which is reported at **YLR 2004 2434**, (2) case of **Wajid Ali v. The State**, which is reported at **2017 SCMR 116**, (3) case of **Muhammad Tanveer v. The State**, which is reported at **2014 P.Cr.LJ 1096**, (4) case of **Muhammad Irfan v. The State and others**, which is reported at **2014 SCMR 1347** and (5) case of **Abid Ali @ Ali v. The State**, which is reported at **2011 SCMR 161**.

4. Learned counsel for the complainant has opposed to grant of bail to the applicant by contending that he has participated in incident by making aerial firing, as such he is vicariously liable for commission of the incident. In support of his contention he relied upon the case of **Muhammad Rashid and The State**, which is reported at **1979 SCMR 92**, (2) case of **Hashim and others v. The State**, which is reported at **1996 P.Cr.LJ 1681**, (3) case of **Muhammad Ashraf v. The State**, which is reported at **1997 PCr.LJ 1605**, (4) case of **Khadim Hussain & 5 others v. Sher Afazal and others**, which is reported at **2000 P.Cr.LJ 976**, (5) case of **Abdul Latif v. The State**, which is reported at **2006 MLD 639**, (6) case of **Muhammad v. The State**, which is reported at **2007 P Cr. LJ 1848**, (7) case of **Muhammad Sadiq v. The State**, which is reported at **1996 SCMR 1654** and **Abdul Ghaffar v. The State**, which is reported at **2009 PCr.LJ 187**.

5. Learned APG has supported the impugned order.

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

8. The specific role of causing death of deceased Shoban and injuries to P.W. Qadir Bux and complainant Ranjhan is attributed to co-accused to co-accused Abdul Jabbar, Farman Deedar, Aaqib and two

unknown culprits. The role attributed to the applicant in commission of incident is only to extent of making aerial firing. The allegation of aerial firing is belied by the fact that there is no recovery of empty from the place of incident. No pistol is secured from the applicant on his arrest by the police. In that situation, the participation of the applicant in commission of incident obviously is calling for further inquiry.

9. The case law which is relied upon by the learned counsel for the complainant is on distinguishable facts and circumstances. In case of **Muhammad Rashid** (Supra), the applicant was attributed role of causing injuries to the deceased with stick. In that context he was refused bail holding him to be vicariously liable for the commission of the incident. In the instant case the applicant has caused no injury either to the deceased or the injured. In case of **Hashim and others** (Supra), the main reason for refusal of bail to the applicant was that he was attributed general allegation of causing lathi blows to the victims. In the instant case, no role of causing injuries to deceased or to witness is attributed to the applicant. In case of **Muhammad Ashraf** (Supra), the main reason for refusal of bail to the accused was that he fired at the complainant party, but same did not hit to anyone, as such he was held vicariously liable for the commission of the incident. In the instant matter the role attributed to the applicant in commission of incident is only to the extent of making aerial firing, which is also belied by the fact that there is no recovery of empty from the place of incident, as such his participation and commission of incident is calling for further inquiry. In the case of **Khadim Hussain** (Supra), the accused who were attributed no active role were admitted to bail while accused who were attributed active role were refused bail. If case of **Khadim Hussain** is

taken into consideration then it goes against the complainant. In case of **Abdul Latif** (Supra) the main reason for refusal of bail to the accused was that he shared common intention with co-accused by firing with his gun at the victims. In the instant matter the applicant has neither fired at the deceased nor at any of the witness.

10. In view of the facts as discussed above while relying upon the case law, which is referred by the learned counsel for the applicant, the applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees three lac) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

11. The instant bail application stands disposed of in above terms.

J U D G E

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