

THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

CrI. Bail Appln: No. S-177 of 2018.

Niaz Hussain and another.Applicants.

Versus.

The State.Respondent.

Syed Ghulam Hyder Shah, Advocate for Applicant.

Ms. Ramishan, A.P.G.

Mr. Faisal Nadeem Abro, Advocate for the complainant.

Date of hearing and order: 12.06.2018.

O R D E R

IRSHAD ALI SHAH, J. It is alleged that the applicants with rest of the culprits in furtherance of their common intention not only committed Qatl-e-Amd of Asghar Ali by causing him hatchet blows, but also caused hatchet blows to P.W. Javed Ali with intention to commit his murder, for that the present case was registered against them.

2. On having been refused post-arrest bail by the learned Trial Court, the applicants have 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 applicants that the applicants being innocent have been involved in this case falsely by the complainant party due to long standing enmity, the injuries attributed to the applicants are not falling within the prohibitory clause, there is delay of one day in lodging of FIR, the complainant and his witnesses are related inter se. By contending so he sought for release of the applicants on bail as according to him their case is calling for further inquiry. In support of his contention he relied upon case of

Muhammad Irfan v. The State (2012 PCr.LJ 625), (2) Parial v. The State (2006 PCr.LJ 1212), (3) Abdul Wahid and 3 others v. The State (2009 PCr.LJ 719), (4) Rana Muhammad Tahseen v. The State and another (2014 PCr.LJ 102), (5) Muhammad Saleh and another v. The State (2011 PCr.LJ 120), (6) Muhammad Sadiq and 4 others v. The State (2001 PCr.LJ 692).

4. Leaned counsel for the complainant has opposed to grant of bail to the applicants by contending that they are neither innocent nor have been involved in this case falsely by the complainant party, they have caused hatchets injuries to P.W. Javed Ali with intention to commit his murder, as such they are vicariously liable for commission of incident. In support of his contention he relied upon the cases of **Khalid Mehmood and another v. Muhammad Kashif Rasool and others (2013 SCMR 1415), (2) Imtiaz Hussain Shah v. The State (2005 YLR 836), (3) Muhammad Jahangir v. The State (2007 YLR 227), (4) Qadir Bux v. The State and others (2017 YLR Note 79), (5) Abdul Rasheed v. The State (1998 PCr.LJ 363) and Karam Dad and others v. Muhammad Younas and others (2005 PCr.LJ 1535).**

5. Learned APG has opposed to grant of bail to the applicants by adopting the arguments, which were advanced by leaned counsel for the complainant.

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

7. The names of the applicants are appearing in FIR with specific allegations that they being armed with hatchets went over to the complainant party and in furtherance of their common intention caused hatchets blows to Ali Asghar and Javed Ali with intention to commit their murder, as a result whereof Ali Asghar died. The specific role of

causing hatchets blows to P.W. Javed Ali is attributed to applicants. In that situation, it would be premature to say that the applicants being innocent have been involved in this case falsely by the complainant party. The nature of injuries sustained by P.W. Javed Ali is hardly of any importance, as it is the case of vicariously liability. It is true that there is delay of one day in lodging the FIR but there could be made no denial to the fact that it is explained plausibly in the FIR itself. The delay in lodging the FIR even otherwise could not be resolved by this Court while deciding the bail application of the applicants. The complainant and his witnesses may be related inter se but their relationship is not enough to disbelieve them at this stage. They are appearing to be natural witnesses to the incident. There appear reasonable grounds to believe that the applicants are guilty of the offence for which they are charged.

8. The case law which relied upon by the learned counsel for the applicants is on distinguishable facts and circumstances. In case of **Muhammad Irfan and othes** (Supra) the main reason for admitting the accused to bail was that the complainant changed his version in FIR by making supplementary statement. In the instant matter no supplementary statement is made by the complainant. In case of **Parial** (Supra) main reason for admitting the accused to bail was that the factual position in respect of presence or absence of co-accused, who was let off by the police made the contents of the FIR to be doubtful. In the present matter no co-accused was let off by police. In case of **Abdul Wahid** (Supra) the main reason for grant of bail to the accused was that no motive for committing the offence appeared on the record. In the instant matter motive for committing the offence is appearing on

the record. In case of **Rana Muhammad Tahseen** (Supra), the main reason for admitting the accused to bail was that he did not cause injury to anyone and two co-accused with similar allegations were already admitted to bail. In the instant matter the applicants have been attributed role of causing hatchets injuries to P.W. Javed Ali with intention to commit his murder. In case of **Muhammad Saleh and others** (Supra) the main reason for admitting the accused to bail was that there were cross cases against both the parties. In the instant matter there is no cross case. In case of **Muhammad Sadiq and others** (Supra), the main reason for admitting the accused to bail was that there was cross version of the incident. In the instant matter there is no cross version of the incident.

9. In view of above while relying upon the case law which is referred by the learned counsel for the complainant, it could be concluded safely that the applicants are not found entitled to be released on bail, as their case is not calling for further inquiry.

10. The instant bail application is dismissed accordingly.

J U D G E

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