

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.910 of 2018

Present:

**Mr. Justice Khadim Hussain M. Shaikh**  
**Mr. Justice Amjad Ali Sahito**

Applicants : (1) Jahanzaib S/o Anwar Saeed.  
(2) Fazal Qadir S/o Rehmatullah,  
(3) Muhammad Ajmal S/o Irfanullah  
(4) Zahid S/o Haji Abdullah Jan  
(5) Muhammad Ismail S/o Abdul  
Waqeel  
through Mr. Ajab Khan Khattak,  
Advocate.

State : Through Mr. Ali Haider Salim, Deputy  
Prosecutor General, Sindh.

Date of Hearing : 24.07.2018

Date of Order : 24.07.2018

### **ORDER**

**AMJAD ALI SAHITO, J** -- Through the instant bail application, the applicants/accused (1) Jahanzaib S/o Anwar Saeed, (2) Fazal Qadir S/o Rehmatullah, (3) Muhammad Ajmal S/o Irfanullah, (4) Zahid S/o Haji Abdullah Jan and (5) Muhammad Ismail S/o Abdul Waqeel seek post-arrest bail in Crime No.145/2018 registered at Police Station Peerabad, Karachi West, for the offences under sections 147, 148, 149, 353, 324, 427, 337-A(i)/34, PPC read with Section 7 of Anti-Terrorism Act, 1997, after their bail plea has been declined by the learned Judge of Anti-Terrorism Court No.XVIII, Karachi Division, Karachi vide order dated 12.06.2018.

2. The brief facts of the prosecution case, as depicted in the FIR, is that on 17.04.2018, complainant Inspector Muhammad Urs Rajar SHO of PS Peerabad reported the matter at PS alleging therein that on the relevant day he was on his routine patrolling duty within the area of his jurisdiction, when he received information that some people are protesting by keeping the dead body of a minor girl Rabia on road near Jamshed Petrol Pump Main Manghopir Road, Orangi Town, Karachi. On such information, he along with the police party arrived at pointed place and found a mob of 200/250 peoples, out of them some miscreants who were armed with weapons started rioting. Such information was conveyed to high officials, hence SIP Lal Khan of Police Post Muhammad Pur, SIP Incharge of PP Frontier, HC Waheed Khan along with the police party, SHO Mominabad Inspector Shoaib Qureshi, SIP Sabir Khattak and SHO Manghopir Inspector Haji Sanaullah also came there for backup of complainant. The mob started pelting stones towards the police officials and also straightway fired on the police party, however, in retaliation, the complainant ordered for firing of tear gas on the mob. Due to the firing, two persons Ilyas S/o Ali Haider and Adnan were injured, who were taken to hospital by their friends. It is also reported that due to the indiscriminate firing of the protesters fear and sense of insecurity was created in the people of area. The police officials SIP Sabir Khattak, PI Shoaib Qureshi, SIP Mushtaq, ASI Abdul Ghani, HC Ali Sher, PC Deedar Ali and PC Ahsanullah were also injured, who were dispatched to the

hospital. Police arrested accused Jahanzeb, Muhammad Ajmal, Fazal Qadir, Zahid, Amanullah and Muhammad Ismail at the spot, however, the names of absconding accused were disclosed as Attaullah, Dr. Saeed, Jamsheed, Kareem, Dr. Hassan, Zia-ur-Rehman and Mujeeb Afghani alongwith 100/150 accused, who were escaped their good from the spot. Due to the throwing of stones by the accused, Govt. police mobile bearing No.SPM-618 and Edhi Ambulance sustained damages, therefore, the instant FIR was registered against the accused.

3. Learned counsel for the applicants/accused, *interalia*, contended that the applicants/accused are innocent and have been falsely implicated in the instant case by the prosecution with malafide intention; that the contents of FIR itself speaks loudly, which does not fall within the parameters of applied sections; that the challan was submitted in the Court of Law in which the prosecution did not add section 302 PPC and that the alleged offence does not fall within the jurisdiction of ATC; that nothing incriminating articles were recovered from the possession of the applicants/accused; that the medical examination of the injured persons was not conducted; that the co-accused is mentally disturbed and is not in his senses, but the police also nominated him as an accused, hence the case of applicants/accused requires further inquiry; that the applicant/accused is not previous convict. He lastly prayed for grant of post-arrest bail.

4. Conversely, learned D.P.G. for the State opposed the grant of bail to the applicants/accused on the ground that they were arrested at the spot, hence are not entitled to the concession of bail.

5. We have heard the learned counsel for the applicant/accused, learned DPG for the State and examined the material available on record.

6. From a perusal of FIR, it does not reveal that at the time of the incident, any person lost his life and/or was murdered by the mob of the people, initially the FIR was lodged under sections 147, 147, 149, 353, 324, 427, 337-A(i), PPC read with section 7 of the Anti-Terrorism Act, 1997 and subsequently, in the report under section 173, Cr.P.C. (challan) section 302 PPC was inserted by showing the death of one Ilyas Ali and one injured namely Adnan, but his statement was not recorded by the Investigating Officer to believe that he has sustained any injury at the hands of the persons of the mob. The alleged injuries are shown to have been caused by hard and blunt substance, which are not specifically attributed to any person amongst the mob and there are general and vague allegations against the persons numbering 250 in the mob. The applicants/accused were shown present in the mob of the people no specific part whatsoever has been assigned to them and they were apprehended by the police empty handed as no recovery of any sort of incriminating articles have been made from the applicants/accused.

7. Under these circumstances, we are of the view that the case of the applicants/accused requires further inquiry into their guilt falling within the ambit of section 497(2), Cr.P.C., which entitled them to the grant of concession of bail and thus, the applicants/accused made out a case for grant of bail and consequently, the bail was granted vide our short order dated 24.07.2018, whereby the applicants/accused were granted post-arrest bail subject to their furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Lac) each and P.R. bond in the like amount to the satisfaction of the trial Court.

8. These are the reasons of the said short order dated 24.07.2018.

9. The observations made hereinabove are tentative in nature and the learned trial Court shall decide the case on its own merits strictly in accordance with law.

**J U D G E**

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