

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.506 of 2018

Present:

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

Applicants : (1) Syed Ghani Shah S/o Raheem Shah,
(2) Gul Nabi Shah S/o Sher Akbar Shah,
(3) Noor Zameen Shah S/o Nazar Shah
through Mr. Naeem Akhtar Tanoli,
Advocate.

State : Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh.

Complainant : Muhammad Ali Firozi S/o Akhlaq
Ahmed Firozi,
through Rana Khalid Hussain,
Advocate.

Date of Hearing : 30.07.2018

Date of Order : 02.08.2018

ORDER

AMJAD ALI SAHITO, J -- Through the instant bail application, applicants/accused (1) Syed Ghani Shah S/o Raheem Shah, (2) Gul Nabi Shah S/o Sher Akbar Shah and (3) Noor Zameen Shah S/o Nazar Shah seek post-arrest bail in Crime No.376/2017 registered at Police Station Shah Faisal Colony, Karachi East, for the offences under sections 147, 148, 149, 337-A(i), 337-H(ii), 324, 302, PPC, after their bail plea has been declined by the learned Judge of Anti-Terrorism Court No.V, Karachi vide order dated 14.03.2018.

2. The brief facts of the prosecution case, as depicted in the FIR, is that on 29.11.2017 one Muhammad Ali Ferozi S/o Akhlaque Ahmed Ferozi, resident of Natha Khan Goth, Karachi came at Police Station, stating that on that day at 7:00 P.M., he and his

colleagues/friends Muhammad Noor Ferozi and Adnan Ferozi were sitting near Qasmia Ferozia Masjid, Natha Khan Goth. About 10/11 persons including Muhammad Suleman Shah, Syed Ghani, Noor Zameen, Gul Nabi Shah and Pervaiz and others assaulted upon them. They were armed with dandas and weapons. Syed Muhammad Siddique Ferozi also came out from his house. The culprits after making firing in the air made their escape good. Complainant Muhammad Ali Ferozi sustained injuries on his left leg and Muhammad Noor Ferozi sustained knife injuries. The mohalla people took the injured to Jinnah Hospital where at that time Muhammad Noor Ferozi was under treatment. The FIR was registered under section 147, 147, 149, 337-A(i), 337-H(ii), PPC. The investigation was assigned to SIP Momin Ali Meerani, who after investigating the matter added sections 324/34, PPC and section 7 of the Anti-Terrorism Act, 1997 and two accused, namely, Noor ul Ameen and Gul Nabi Shah were arrested. On 02.12.2017 injured Muhammad Noor Ferozi S/o Muhammad Siddique during treatment expired and, as such, section 302/34 PPC was also inserted. According to the prosecution, on that day the accused persons created harassment amongst the public place and caused injuries to the injured and death of one Muhammad Noor Ferozi. The investigation then transferred to the Inspector Khalid. The three accused, namely, Syed Ghani Shah, Toufiq Ali Shah and Suleman Shah were shown absconders in the charge-sheet, but they appeared before the trial Court seeking their pre-arrest bail, which was dismissed by the trial Court vide order dated 06.02.2018.

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 complainant with ulterior motives; the applicants/accused have no concern with the alleged incident, as neither they caused any injury to the complainant party nor any incriminating article has been recovered from their possession; that the applicants/accused Gul Nabi Shah and Noor Zameen Shah remained under custody of police remand for more than 15 days, but no any recovery was affected, which makes the story doubtful and of further inquiry; that in the statement of the witnesses recorded under section 161, Cr.P.C. dated 30.11.2017, the witnesses, namely, injured Muhammad Ali Ferozi, Jan Muhammad, Syed Adnan Ali have stated that they performed Eid Milad-un-Nabi and on the same a quarrel took place and there was fear and insecurity, but thereafter the story was concocted and involved the applicants/accused in the commission of the crime after sixth day of alleged incident; that no specific role has been assigned to the present applicants/accused with the commission of alleged offence, therefore, the case against the applicants/accused requires further inquiry; that no private and/or independent person was associated as mashir of the incident; that the applicants/accused are not previous convict nor they are hardened and desperate criminal. He lastly prayed for the post-arrest bail.

4. Conversely, learned D.P.G. for the State has strongly opposed the grant of bail to the applicants/accused on the ground that the

charge was framed against the applicants/accused and PW-1 complainant Muhammad Ali has also been examined by the learned trial Court and he has fully implicated the applicants/accused with the commission of crime; that specific role has been assigned by the prosecution witnesses; that the allegation against the applicants/accused are the sectarian rivalry; that the murder assault upon the complainant party is with common intention of the applicants/accused and in such cases, the Apex Court as well as this Court have refused the grant of bail. He lastly prayed that the bail application may be dismissed.

5. Learned counsel for the complainant adopted the arguments advanced by the learned D.P.G. and lastly prayed for dismissal of the bail application.

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

7. It is an admitted fact that the names of the applicants/accused do transpire in the FIR, they all jointly attacked upon the complainant party and resultantly one innocent person, namely, Muhammad Noor Ferozi lost his life and other three eyewitnesses, namely, Syed Adnan Ferozi, Syed Muhammad Siddique Ferozi and Muhammad Ali became injured when they were fixing miniature flags to celebrate 12 Rabi-ul-Awwal (Jashan Eid Milad-un-Nabi), which shows that it is sectarian crime as was surfaced during investigation. The ocular version of the complainant has also supported by the medical evidence.

Furthermore, there is sufficient incriminating material against the applicants/accused to connect them with the commission of the offence. The statement of the eyewitnesses were recorded under section 161, Cr.P.C. and they all have supported the version of the complainant. The offence with which the applicants/accused are charged fall under the prohibitory clause of section 497, Cr.P.C. Challan has been submitted in the trial Court, charge has also been framed. The examination-in-chief of the complainant has been recorded, three eyewitnesses are in attendance and the case diaries of the trial Court shows that the counsel for the applicants/accused is taking frequent adjournments, due to which the trial has not been concluded and at this stage deeper appreciation of the evidence is not warranted under the law.

8. We are of the considered view that the case of the applicants/accused falls while within the prohibition contained in Section 497, Cr.P.C. which disentitle the grant of bail to the applicants/accused and thus, the applicants/accused have failed to make out a case for grant of bail. Accordingly, the instant bail application is dismissed.

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.

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