

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Bail application No.S- 477 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

05.10.2017.

Mr. Ahsangul Dahri Advocate for applicant/accused

None present for complainant.

Mr. Shahzado Saleem Nahiyon APG

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ABDUL MAALIK GADDI, J: Applicant/accused Muhammad Arab Chandio is present on interim pre-arrest bail granted to him by this court vide order dated 21.06.2016. Today this bail application is fixed for confirmation or otherwise.

2- The facts of prosecution case are that on 10.9.2014 in early morning complainant Abdul Ghani Kolachi, his cousin Muhabbat Khan Kolachi aged about 62-years, nephew Arif Kolachi and cousin (Marot) Daim Kolachi jointly went to their lands. Out of them, Muhabbat Khan Kolachi and Arif Kolachi were cutting crop from S.No.463 Deh Paki Sita while complainant and Daim Kolachi were digging the water channel when at about 8.30 am they saw and identified that applicant/accused Arab Chandio duly armed with Repeater alongwith 39-other nominated accused being armed with deadly weapons came there. It is further alleged by complainant that at the instigation of accused Arab Chandio, accused Bachal Chandio, Gulsher Chandio, Nooral alias Noor Chandi, Mehar Chandio and

Manzoor Chandio made straight fires from their Kalashinkovs and G-3 Rifles upon complainant's cousin Muhabbat Khan and nephew Arif which fires hit to Muhabbat Khan who fell down raising cry so also hit to Arif on his back to which Arif hide himself into crop and jungle. Thereafter, accused persons went away raising slogans and issuing aerial fires. After departure of accused persons,

complainant and his cousin Daim found that Muhabbat Khan had sustained fire arms injuries and died. In the meanwhile injured Arif Kolachi came out from crop and jungle raising cries. Such information was given to Sita Road Police where police came, completed necessary proceedings and brought the deceased and injured at RHC Sita Road. The complainant obtained the letter for injured from police who was later on referred to CMC Larkana. The complainant after funeral rites moved an application before the court and on the basis of order NO.1607 dated 19.9.2014 passed by learned Additional Sessions Judge-III Dadu got lodged his FIR to the above effect.

3- It is stated by learned counsel for applicant/accused that applicant/accused is innocent and has not committed the alleged offence but due to old enmity between the parties he has been roped in this case. He added that as per FIR the applicant/accused took no active part in the commission of alleged offence hence determination of vicarious liability and sharing common intention by applicant/ accused is yet to be determined at the time of trial. He further argued that all the witnesses are interested, setup and inimical towards applicant/accused and no independent person has been cited as witness. He further submits that applicant/accused is aged about 75-years hence unable to commit such offence. He also submits that there is only allegation against applicant/accused that at the time of incident he was armed with gun and instigated to co-accused to commit the murder of complainant party. According to him, he did not use the gun in the commission of offence. He lastly argued out that in this matter 40-accused have been nominated out of whom 18-accused persons have been granted bail by the trial court and the case of applicant/ accused appears on better footing than those

who have been granted bail by the trial court. Therefore, he prayed for confirmation of interim pre-arrest bail already granted to applicant/accused.

4- Learned APG has vehemently opposed to confirm the bail of applicant/accused on the ground that applicant/accused is specifically

involved in this crime and during incident this applicant/accused has made hakal/instigated to other accused persons for committing murder of deceased Muhabbat Kolachi and injured Arif.

5- Heard arguments and perused the record.

6- After hearing the parties and perusing the record, it has been noticed that only allegation against applicant/accused is that he was present at the spot and also instigated other accused persons for committing the murder of deceased Muhabbat Kolachi. Though he was armed with gun but neither he caused any injury to deceased nor even did not make any fire from his weapon during whole the affair. Under the circumstances of the case, the question with regard to vicarious liability of applicant/accused is yet to be determined/resolved by the trial court after proper appreciation of evidence. Applicant/accused has already been challaned. He is no more required for investigation. He is present in court, appears to be an old age and infirm person. It is stated by learned counsel for applicant/accused that he is aged about 75-years and he is regularly attending the trial court without any substantial progress in the matter. According to learned APG nothing was recovered from the possession of applicant/accused.

6- In this matter as argued by learned counsel for applicant/ accused that out of 40-accused persons, 18 accused persons have already been granted bail by the trial court and case of present applicant/accused is on better footing then those who have been granted bail but when this position was confronted to learned APG, he is not able to reply satisfactorily. This bail application is pending since 2016 and admittedly no substantial progress has been made by the trial court.

7- Under the circumstances I have no hesitation to hold that applicant/accused prima facie has made out a case for confirmation of his bail already extended in his favour. I accordingly, allow this bail application and confirm the interim order already passed in favour of applicant/accused on same terms and condition with direction to applicant/accused to appear before the trial court to face trial.

8- Since this matter pertains to the year 2014, therefore, the trial court is directed to expeditiously proceed the matter and decide the case preferably within a period of four months after receipt of this order. No un-necessary adjournment shall be granted to either side. The compliance report be submitted through the Additional Registration of this court.

9- Before parting with the order, I would like to make it clear that observation if any, made in this order, is tentative in nature and shall not affect the merits of the case.

JUDGE

A.Rasheed

