

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr.Bail.Appl.No.S- 1012 of 2018
Cr.Bail.Appl.No.S- 1023 of 2018

Date of hearing: 23.01.2019.
Date of order: 23.01.2019.

Mr. Mian Taj Muhammad Keerio, Advocate for applicants in
Cr.B.A.No.S-1012/2018.

Mr. Aijaz Shaikh, Advocate for applicant in Cr.B.A.No.S-
1023/2018.

Mr. Muhammad Yaseen M. Khaskheli, Advocate for complainant.

Mr. Shahid Ahmed Shaikh, D.P.G. for the State.

ORDER

ZULFIQAR AHMED KHAN, J: By this common order, I intend to dispose of both the aforesaid bail applications as they arise out of one and same Crime No.45/2017, registered at Police Station Chotiyaroon District Sanghar, under sections 302, 201, 34 PPC.

2. Precisely, the prosecution case as per FIR is that deceased Munawar Ali (brother of the complainant) was working in the house of Zamindar Muhammad Ibrahim. On 16.09.2017 at about 08-00 a.m, complainant received a phone call from one Yar Muhammad who informed him that his brother Munawar Ali has passed away in the night and come for taking his dead body. Complainant alongwith his brother Manzoor, Mumtaz, maternal uncle Niaz Muhammad and some other people proceeded to the Otaq of Muhammad Ibrahim, where they saw accused 1. Yar Muhammad, 2. Abdullah, 3. Badal and 4. Abdul Qadir @ Qadiro, who were carrying the dead

body of deceased from the roof of Otaq. Complainant party noticed that there was blood on the neck of deceased, on inquiry Muhammad Ibrahim told that deceased had severe hepatitis and due to this ailment his veins have been damaged. Thereafter, complainant took the dead body to his village and during bath (ghusal), it transpired that deceased had received a firearm injury which had entered from neck and exited from head. On questioning by the complainant party, the accused Muhammad Ibrahim, Yar Muhammad, Abdullah, Badal and Abdul Qadir @ Qadiro pressurized the complainant party that due to hepatitis the body of deceased was broken. Complainant then informed the police and got conducted postmortem of deceased. After burial ceremony of the deceased, complainant appeared at the police station and lodged report against accused stating that accused Yar Muhammad Rajar, Abdullah Rajar, Badal Rajar and Abdul Qadir @ Qadiro in furtherance of their common intention made fire shot on the neck of his brother Munawar Ali and committed his murder whereas Muhammad Ibrahim Rajar in order to save the accused persons tried to satisfy them by narrating the reason of disease and tried to bury the dead body hurriedly.

3. After registration of FIR, police arrested the accused, conducted investigation of the case and submitted challan before the concerned court of law for trial.

4. Mr. Mian Taj Muhammad Keerio, learned counsel appearing for applicants Yar Muhammad and Abdullah in Cr.B.A.No.S-1012/2018, contends that the applicants are innocent and they have falsely been involved in the case in hand; that there is no allegation against the applicants to involve them in the commission of alleged offence; that there is delay of one day in lodging the F.I.R but no plausible explanation has been given; that the incident is un-seen and un-witnessed and the complainant has malafidely given the names of applicants just to drag them in criminal proceedings; that co-accused

namely Abdul Qadir @ Qadario, who confessed his guilt and voluntarily produced crime weapon, therefore, the case of the applicants / accused requires further enquiry. Learned counsel lastly contended that co-accused Muhammad Ibrahim having identical role in the commission of alleged offence, has been granted bail by the trial court hence on the rule of consistency the present applicants/accused are entitled for same relief. In support of his contentions, learned counsel has placed reliance on the cases reported as MUHAMMAD TANVEER v. THE STATE and another (PLD 2017 SC 733) and NISAR AHMED v. THE STATE and others (2014 SCMR 27).

5. Mr. Aijaz Shaikh, learned counsel for the applicant Muhammad Ramzan @ Badal in Cr. Bail Application No.S-1023 of 2018, while adopting the arguments advanced by Mr. Keerio, contends that neither the present applicant was present at the place of incident nor there is any material available on record to connect him in the commission of alleged offence; that there is delay of more than 23 hours in lodging the FIR; that incident is unwitnessed; that it was co-accused Abdul Qadir @ Qadiro Rajar who was arrested by police on 18.09.2017 and during investigation disclosed that he had committed the murder of deceased Munawar with pistol and such crime weapon was recovered from him; that the vicarious liability on the part of applicant, if any, would be determined at the time of trial. Lastly, he has prayed for grant of bail to the applicant / accused.

6. Conversely, Mr. Muhammad Yaseen M. Khaskheli, learned counsel for the complainant contends that present applicants/ accused are nominated in the FIR with specific role; that they have shared the common intention with co-accused Abdul Qadir @ Qadiro who has committed the murder of deceased and also confessed his guilt; that present applicants / accused have concealed the offence of murder in order to save the principle accused and thereby committed an offence punishable under Section 201 Cr.P.C. All the

PWs have supported the case of prosecution as well as corroborated the medical evidence. In support of his contentions, learned counsel has placed reliance on the cases reported as AMIR BUX MACHI v. THE STATE (2013 YLR 2190), MULO AHMED v. THE STATE (2011 MLD 1171) and ALAM ZAR KHAN v. THE STATE and another (2014 YLR 1595).

7. Mr. Shahid Ahmed Shaikh, learned D.P.G while adopting the arguments advanced by the learned counsel for the complainant contends that no doubt co-accused Abdul Qadir @ Qadiro committed the murder of deceased but the present applicants also shared their common intention and facilitated him in the commission of offence and tried to conceal the murder and to save the actual culprits.

8. I have heard the learned counsel for the respective parties and gone through the entire material available on record.

9. A bare reading of the FIR shows names of the present applicants/accused appear in FIR. No doubt the alleged incident was unwitnessed and unseen however question arises here that why the present applicants/accused concealed the fact of murder of deceased and tried to convince the complainant that the deceased had died due to illness of hepatitis and they also made their best efforts to have the dead body hurriedly buried so that the actual fact of murder could not come out. Apparently, the complainant party came to know about the murder of deceased Munawar Ali when the dead body was taken to bath (ghusal) by Molvi Wahid Bux Bughti before the burial and said Molvi informed the complainant party that deceased had received a firearm injury on his neck and exit from head which fact was subsequently confirmed by the Medical Officer who opined that the cause of death was on account of said injury. With regard to murder of deceased, the complainant and his witnesses have fully supported the case of prosecution in

their statements recorded u/s 161 Cr.P.C, as well as blood stained earth and crime empty was recovered from the place of incident which prima facie connects the applicants/accused with the commission of offence that they knowingly that accused Abdul Qadir @ Qadiro has committed the murder of deceased by means of firearm injury concealed such fact hence prima facie the present applicants/accused by sharing their common intention participated in the commission of such a heinous offence of murder which carries capital punishment. According to learned A.P.G, the motive behind the incident is that deceased had illicit terms with the daughter of accused Abdullah. Moreover, the contention of the learned counsel for the applicants/accused that co-accused Muhammad Ibrahim has been granted bail by the trial court, it appears from the record that bail to co-accused Muhammad Ibrahim has been granted solely on medical ground who per record of the trial court was at the age of 60 years and cardiac patient hence the question of rule of consistency at this stage does not arise.

Apart from above, it appears from the record that accused Yar Muhammad who informed the complainant on phone about the death of his brother Munawar Ali, is the son of accused Muhammad Ibrahim. There is no justification on the part of accused party that why they had given false information to the complainant that his brother has died due to illness of hepatitis. As per FIR, complainant and his witnesses saw the present accused while getting down the dead body of deceased from the roof of Otaq. It is further alleged that complainant party was pressurized to bury the dead body in a hasty manner. Prima facie the applicants/accused have shared their common intention in the commission of a heinous offence and tried to conceal the evidence. It is settled law that if several persons would unite with common purpose to do any criminal offence, all those who would assist in the completion of their object would be equally guilty. There is nothing available

on record to believe that complainant partly has falsely implicated the applicants/accused in the commission of offence. Per counsel for the parties charge has been framed by the trial court and case is fixed for recording of evidence.

In view of the above circumstances, I am of the considered view that available material connects the accused with the commission of offence which carries capital punishment. They have failed to bring their case within purview of sub-section 2 of Section 497 Cr.P.C. Moreover, at the bail stage tentative assessment is to be made and deeper appreciation is to be avoided. Accordingly, the instant both bail applications having no merit for consideration are hereby dismissed, however trial court is directed to expedite the matter and conclude the trial as early as possible.

Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the trial court at the time of trial.

These are the reasons for my short order of today through which both the bail applications were dismissed.

JUDGE

Tufail