

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

Cr. Bail A. No.S- 1207 of 2020

Date of hearing and decision: 11.01.2021.

Mr. Ghulamullah Chang, Advocate for the applicant.

Ms. Rameshan Oad, A.P.G.

ORDER

NAZAR AKBAR, J: - Through instant application, applicant Mithal Khan seeks post-arrest bail in Crime No.02 of 2020, registered at Police Station Salaro, under sections 302, 324, 147, 148, 149, 120-B, 109, 337-F(vi), F(i), H(2) P.P.C.

2. Brief facts of the case are that on 27.01.2020, complainant Amir Bux alongwith Rahib Rind and Nazir Khan Rind was irrigating their land when at about 12:20 a.m. accused Rafiq and his accomplices duly armed with kalashnikov and other lethal weapons came at the house Jan Muhammad and made straight fire upon the inmates of house, who were sleeping there; thereafter, the accused ran away while making aerial firing. Thereafter, complainant lodged the F.I.R; perusal of which shows that present applicant has not been named in the same.

3. Learned counsel for the applicant mainly contended that there is a delay of about 23 hours in lodging of the F.I.R, which has not been explained plausibly; that the applicant has falsely been implicated in this case due to enmity with malafide intention; that neither name of the applicant appears in the F.I.R. nor any specific role has been assigned to him; that the applicant has only been implicated on the basis of further statement of complainant; that the

applicant is behind the bars since his arrest; that nothing indiscriminating has been recovered from the possession of the applicant; that no direct evidence is available on record to connect the applicant with the commission of alleged offence; that all P.Ws. are interested and no private and independent person has been cited as P.W. or mashir; that the case of the applicant requires further inquiry as contemplated under section 497(2) Cr.P.C.

4. Mr. Muhammad Akram Rajput Advocate although present and tried to argue his case; however, perusal of file shows that he has not yet filed his Vakalatnama; therefore, his arguments whatever he advanced cannot be taken into consideration.

5. Learned A.P.G although opposes this bail application but has not been able to controvert the contentions so advanced by learned counsel for the applicant as well as the fact that prosecution has no evidence with it except additional statement of complainant which was recorded after 45 days of the incident.

6. I have heard the arguments of learned counsel for applicant as well as learned A.P.G and perused the Record. This is a heinous offence but the applicant has not been named in the F.I.R. and he has only been implicated by the complainant with commission of alleged offence while recording his further statement, which was recorded after 45 days of the incident as well as registration of F.I.R. Further no any specific role has been assigned to him. As regard the vicarious liability of the applicant, it can only be examined and considered by the trial Court after recording the evidence of both parties.

7. In view of the facts and circumstances of the case, the applicant has been able to make out his case as that of further inquiry, as envisaged under section 497(2) Cr.P.C. Accordingly, the instant application is allowed. The applicant be released on bail upon

his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R Bond in the like amount to the satisfaction of trial Court.

8. The findings made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of the same while deciding the main case on merits.

JUDGE

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