

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

Cr. Bail Application No.D-12 of 2020

Before:

Mr. Justice Nazar Akbar,
Mr. Justice Khadim Hussain Tunio

Mr. Afzal Karim Virk, Advocate for Applicant.
Mr. Javed Ali Buriro, Advocate for complainant.
Mr. Shahid Ahmed Shaikh, D.P.G

Date of hearing: 12.01.2021

Date of order: 12.01.2021

O R D E R

Khadim Hussain Tunio, J,- By means of this order, we intend to dispose of the captioned criminal bail application filed by applicant Hussain @ Muhammad Hussain seeking his admission to post arrest bail in Crime No.111 of 2014, registered at P.S Town District Mirpurkhas, for offences punishable under Sections 302, 324, 427, 337-H(ii), 34 PPC read with Section 6/7 of ATA, 1997.

2. It is alleged that the applicant alongwith rest while being armed with deadly weapons, in furtherance of their common intention, attacked the complainant party and committed Qatal of deceased Munawar, Suneel Kumar and Allahdino and caused injuries to PWs Mir Noorullah and Omparkash, for which present F.I.R was registered.

3. Learned Counsel for the applicant has mainly contended that there are contradictions in ocular account as well as medical evidence; that there is unexplained delay of 23 hours in lodging of

F.I.R; that during incident, the complainant did not receive any injury as such his presence at the scene of occurrence is doubtful; that there are contradictions in the version of F.I.R as well as deposition of complainant recorded before the trial Court; that in 161 Cr.P.C statements of both witnesses, it transpires that only applicant caused firearm injury to injured Mir Noorullah and deceased Munawar; however, their statements are silent regarding shots fired by applicant and injuries sustained by Munawar and Mir Noorullah; that there is eight days' delay in recording of 161 Cr.P.C statements of the witnesses; that nothing was recovered from the possession of applicant; that the property if any has been possessed was foisted upon the applicant; that applicant is innocent and is being involved by the complainant due to ulterior motives and that no criminal record is found present against the applicant. He, therefore, prays that applicant may be released on bail, for which he is ready to furnish surety. In support of his contentions, he has relied upon the case of MUHAMMAD DAUD and another v. the STATE (2008 SCMR 173) and ASHFAQ AHMAD BUTT v. MUHAMMAD AZAM (2007 SCMR 1254).

4. Learned Counsel for complainant as well as learned D.P.G have vehemently opposed the bail plea of the applicant while contending that there is specific role against the applicant in commission of the offence in which three innocent people lost their lives, so also injuries sustained by the two PWs, therefore, the applicant deserves no leniency.

5. We have heard the learned Counsel for the respective parties and perused the record.

6. Admittedly, the applicant/accused is nominated in the F.I.R with specific role of causing fire arm injuries to deceased Munawar and injured PW Mir Noorullah. The version of the complainant has been fully supported by the PWs in their 161 Cr.P.C statements. The ocular account so furnished in the case has been fully supported by the medical evidence. The delay in lodging of F.I.R has been fully explained by the complainant as in the like cases of murder the complainant party always remains busy in funeral ceremony of the deceased. As far as the contention of learned Counsel for applicant regarding rule of consistency with the case of co-accused Inayat Ali, who has been admitted to post arrest bail by the learned trial Court, is concerned, in our view the case of present applicant is totally distinguishable from the case of Inayat Ali, whose name does not transpire in the F.I.R as such no question of rule of consistency does arise against the present applicant. It also transpires from the record that applicant Hussain @ Muhammad Hussain not only exchanged hot words with deceased Munawar Ali but also made straight fire upon him as well as PW Mir Noorullah. This offense of the applicant makes his case to fall within the prohibitory clause of Section 497 Cr.P.C. As far the ground that there are contradictions in memo of injuries, postmortem report and evidence of PWs, in our opinion same requires deep appreciation of evidence which is not warranted by law at bail stage and same has been precluded by the Honourable Apex Court in numerous cases, one of which is the case of SHAH ZAMAN & 2 others v. The STATE & another (PLD 1994 Supreme Court 65) and BILAL KHAN v. The STATE through PG PUNJAB and another (2020 SCMR 937). Regarding delay in recording 161 Cr.P.C statements of PWs, the Honourable Supreme Court in the case of IMTIAZ AHMED v. The STATE (PLD 1997 Supreme Court 545) has held that the belated statement of witnesses recoded under Section 161 of the

Code could be looked into by the Courts for tentatively determining whether the allegations against the petitioners disclosed a reasonable ground for believing that the petitioners were guilty of non-bailable offence.

7. In view of the above circumstances and discussion, we are of the humble opinion that the applicant has failed to make out a case for further inquiry, therefore, at this stage, the applicant is not entitled for concession of bail. Consequently, instant criminal bail application under Section 497 Cr.P.C is hereby dismissed.

8. Needless to mention here that the observations made hereinabove are tentative in nature and shall not in any way prejudice the case of either party at trial.

JUDGE

JUDGE

Shahid