

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

Cr. Bail Application. No.D- 17 of 2018
Cr. Bail Application. No.D- 20 of 2018
Cr. Bail Application. No.D- 21 of 2018

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Date of hearing: 23.05.2018.
Date of order: 23.05.2018.

Mr. Mian Taj Muhammad Keerio, Advocate for applicants in
Cr.B.A.No.D-17 & 20 of 2018.

None present for applicant in Cr.B.A.No.D-21 of 2018.

Mr. Shahzado Saleem Nahiyoon, D.P.G. for the State
alongwith IO/Inspector Amjad Javed Kalyar.

ORDER

NAIMATULLAH PHULPOTO, J: By this single order, we intend to dispose of the aforesaid bail applications moved on behalf of the applicants/accused namely Shahid, Farhan, Ali Raza, Zaid, Muhammad Shafique, Muhammad Majid, Javed and Israr Ahmed, all by caste Qureshi involved in Crime No.32/2018 registered at Police Station Hussainabad Hyderabad u/s 147, 148, 353, 504 PPC r/w Section 6/7 of ATA, 1997.

2. Brief facts of prosecution case as unfolded in the FIR are that on 05.03.2018 murder of Hasnain aged about 22 years was committed. Such FIR was lodged in which Hamza Abbas, Changezi and Sajjad

were named as suspects. On 09.03.2018 ASI Imtiaz Ahmed brought Hamza Abbas and Sajjad Ali at Police Station for interrogation. It is alleged that on the same date at 1305 hours Civil Judge & Judicial Magistrate conducted raid at P.S Hussainabad and released Bhai Khan and Manthar illegally detained in the case on execution of P.R. Bond. In the meanwhile, at 1330 hours, it is alleged that 100/200 persons appeared at Police Station and deterred the police party from discharge of their lawful duties. It is further alleged in the FIR that 100/200 persons suspected that accused Hamza Abbas and Sajjad Ali Qambrani involved in the murder case have been released by the police. Such entry was made by the Raid Commissioner and FIR was lodged against the unknown persons vide Crime No.32/2018 for offences u/s 147, 148, 353, 504 PPC r/w Section 6/7 of ATA, 1997.

3. After usual investigation challan was submitted against the applicants/accused u/s 324, 353, 504 PPC and Section 6/7 of ATA, 1997.

4. Bail applications were moved on behalf of the applicants/accused before the learned Ist Additional Sessions Judge/Special Judge ATC, Hyderabad, the same were rejected by him vide orders dated 12.04.2018 and 19.04.2018. Hence the applicants/accused have approached this court for post arrest bail.

5. Mian Taj Muhammad Keerio, advocate for applicants/accused mainly contended that brother of applicant/accused Ali Raza was murdered, Police arrested the culprits and released them for the malafide reasons. It is further contended that prosecution story was unbelievable, about 100/200 persons appeared at the police station but no injury or damage was caused to the police officials. It is also argued

that names of the applicants/accused did not transpire in the FIR. It is stated that a false case has been registered by the police to pressurize the accused Ali Raza to withdraw from the murder case of his brother. Lastly, it is argued that element of terrorism was missing in the case and trial court has no jurisdiction to try case under the provisions of Anti-Terrorism Act, 1997. In support of contentions reliance has been placed upon the case of Syed Amanullah Shah v. The State and another (PLD 1996 Supreme Court 241).

6. Mr. Shahzado Saleem Nahiyoon, D.P.G. appeared for the State and recorded no objection for grant of bail to the applicants/accused in the case.

7. We have carefully heard the learned counsel for the parties and perused the relevant record.

8. It is matter of record that names of the applicants/accused did not transpire in the FIR. It is surprising to observe that 100/200 accused persons appeared at the police station raised slogans but no harm was caused to the police officials at all. In the FIR No.32/2018 lodged by ASI Imtiaz Ahmed, it is mentioned that brother of applicant/accused Ali Raza was murdered and suspected persons were brought by police at the police station and Civil Judge & Judicial Magistrate conducted raid. In such circumstances, in case the applicants/accused went to the police station to pursue the murder case. Apparently act of accused did not involve serious violence against police, to attract the provisions of Anti-Terrorism Act, 1997. Allegations leveled against the applicants/accused require deeper appreciation of evidence which is not possible at this stage. Thus, reasonable doubt arises with regard to the participation of the accused persons in the crime. The accused should not be deprived

of benefit of bail. In such a situation, it would be better to grant bail to accused persons than to keep them in jail during trial. Freedom of an individual is a precious right as held by Honourable Supreme Court in the case of Syed Amanullah Shah v. The State and another (PLD 1996 Supreme Court 241). The relevant portion is reproduced as under:-

“5. The allegation of Lalkara usually levelled against an accused instigating his companions to kill someone is frequently made in our country, but the Courts on the tentative assessment of the evidence about the allegation of Lalkara, grant bail to the accused allegedly raising Lalkara or instigating their companions to commit the crime, with almost equal frequency. If bail can be granted to a person present at the spot at the time of occurrence instigating his companions to kill-some-one present there, then why a person who was not present on the spot but allegedly instigated the accused to kill the deceased should be deprived of such concession during the trial. There can be no two opinions that the case of a conspirator or abettor not present on the spot stands at lower footing than the case of the accused instigating his companion to commit the crime being himself present on the spot. Furthermore, it is very easy to set up accusation of abetment/instigation/conspiracy/lema; needless to say when parties are inimically disposed, the possibility of false implication of opponent is very much there. So, we are of the view that where post arrest bail is granted in such cases, then it should not be cancelled as a matter of course or in routine. Once bail is granted by a Court of competent jurisdiction, then very strong and exceptional grounds would be required for cancelling the same. Provisions of section 497(5), Cr.P.C. are not punitive. There is no legal compulsion for cancelling 'bail granted in cases punishable with death, imprisonment for life or imprisonment for ten years. To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual

is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused.”

9. Prima facie there are no reasonable grounds for believing that the applicants/accused have committed the alleged offence but there are sufficient grounds for further inquiry into their guilt. Resultantly, concession of bail is extended to the applicants/accused subject to their furnishing solvent surety in the sum of Rs.10,000/- (Rupees ten thousand) each and P.R. Bond in the like amount to the satisfaction of the trial court.

10. Before parting with this order, it is observed that the accused would be at liberty to approach the trial court for transfer of the case to the court of ordinary jurisdiction. In the light of above observations transfer application shall be decided by trial court in accordance with law.

JUDGE

JUDGE

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