

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No.S- 580 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicants:	Muhammad Aslam and others Through Mr. Zahid Ali Khoso, Advocate
Complainant	Fateh Muhammad through Mr. Muhammad Ishaque Khoso, Advocate
The State:	Ms. Safa Hisbani, Assistant P.G Sindh
Date of hearing & Decision :	01.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J :- The Applicants through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned 1st Additional District & Sessions Judge, Badin vide order dated 07.07.2021.

2. Facts as per FIR are that on 14.6.2021 at 1500 hours, Complainant Fateh Muhammad son of Photo Jamali lodged FIR No. 48 of 2021 at Police Station Tando Bago alleging therein that he is zamindar. His son Mutabar Jamali aged 28 years was residing with him. On 13.6.2021, childrens of Aslam Jamali and his children quarreled inside date trees. Complainant was inside the house. His sons Fida Hussain, Badshah and deceased Mutabar were busy in cutting devi bushes. Complainant heard fire shots outside the house and he came out and saws Namosh son of Saleem Jamali was having pistol, Aftab son of Aslam Jamali was having riffle, Altaf son of Saleem Jamali was having gun, Ayaz son of Aslam Jamali was having repeater, Aslam son of Muhammad Haneef Jamali was having pistol and they while coming towards his sons were making aerial firing, when they reached near their sons, Aslam Jamali and other abused and shouted that your childrens fought with our children and he instigated to co-accused persons to kill complainant side. At 17:15 hours accused Namosh opened pistol fire upon Mutabar who on receiving firearm injury fell down. Thereafter, Aslam told that our

task completed. Accused persons making aerial firing left place of incident. Mutabar expired at the spot. Complainant informed the police and after post mortem, dead body was buried and the FIR was registered.

3. Learned counsel for applicants contended that accused persons are innocent and have falsely been implicated in this case; they were not available at place of incident. As per CDR record of mobile phone of accused Ayaz Ali, he was at dehi city, which was 20 K.Ms away from place of incident while accused Altaf Hussain was at Pangrio city, which was 30/35 K.M away from place of incident. As per FIR only aerial firing attributed to accused persons. Story of FIR is false, baseless and concocted. He further contended that accused persons are going to join investigation but the investigation officer is not permitting them. In this regard, he has filed photo copy of application to SSP Badin. He lastly contended that if bail of accused persons is not confirmed then they will face humiliation. Learned counsel has relied upon case of Mohammad Aslam Vs. The State 1999 P.Cr.L.J.749, Mukaram Vsl. The State and another 2020 SCMR-956, Abu Bakar Siddique alias Muhammad Abu Bakar Versus The state and others 2021 SCMR-540, Sajid Versus Samin ur-Rehman 2021 SCMER-138, Jahanzeb and others Vs. The State through A.G 2021 SCMR-63, Liaquat Ali Versus The state 2017 YLR-Note-133, Najaf Ali Shah Vs., The State 2021 SCMR-736, Karim Bux Mari and two others Vs. The State 2020 P.Cr.L.J.Note-81, Zaffar Mehmood Vs. Muzaffar and another 2014 P.Cr.L.JH.1512, Ababa Vs. The state 2013 YLR-1481, Mst.Sughran Bibi Vs. The state and other 2019 P.Cr.L.Lahore-1297, Dil Murad Vs. The State 2010 SCMR-1178, Tariq and two others Vs. The State 2009 P.Cr.L.J.Karachi-320, Muhammad Hashim Khoso Vs. The State 2011,P.Cr.L.J.Karachi-1580 and Khalid Ahmed Khan Lund Vs. the State PLD-2015 Sindh-20.

4. Learned A.P.G. assisted by counsel for complainant opposed the bail application on the ground that names of accused persons are mentioned in FIR and common intention/object is part of record. No CDR record is produced and mere mentioning the ground of CDR is not sufficient to prove plea of alibi, so accused persons are not entitled for the confirmation of bail as they are avoiding to join the investigation. Learned counsel for complainant has relied upon case of Mamaras v. The State (PLD 2009 SC 385).

5. I have heard learned counsel for the applicants so also learned A.P.G., appearing on behalf of the State duly assisted by learned counsel representing the complainant and have perused the material available on record with their assistance.

6. The learned trial court premised its findings in the matter that the names of present applicants transpire in the FIR with specific role of aerial firing, but the concession of bail was declined to the applicants on the ground that they failed to appear and remained absent. However, their bail was not decided on merit. It is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in way while granting bail. I am, prima facie, of the view that learned trial Court has not appreciated the facts and circumstances of the case in its true perspective while declining bail to the applicants. Prima-facie no overt act had been ascribed to the applicants save for alleged ineffective firing, there is no injury by means of weapon, though the applicants were stated to be armed with weapons, but they did not use it which factum also needs to be proved because no recovery of weapon was made from them. Only main accused Namosh was attributed fatal blow to deceased. The question of vicarious liability of the applicants will be determined at trial. In this view of the matter, it is a case of further inquiry covered by section 497(2), Cr.P.C.

For the above reasons, the interim bail granted to the applicants vide order dated 15.7.2021 is confirmed on the same terms and conditions.

JUDGE

Sajjad Ali Jessar