IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Bail Application No.S-1004 of 2021

Applicants	:	Muhammad Ameen Khokhar and Gulab Khokhar both sons of Muhammad Raheem Khokhar, through M/s Syed Tarique Ahmed Shah and Saad Salman Ghani, Advocates.
Respondent	:	The State through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.
Complainant	:	Saeed Khan Son of Imam Bux through Mr. Shahid Akhtar Awan, Advocate.

Date of hearing : **22.11.2021**
Date of Order : **22.11.2021**

O R D E R

<u>*AMJAD ALI SAHITO, J:-*</u>   Through the instant bail application, the applicant/accused above named seek their post-arrest bail in Crime No.22 of 2021, under sections 302, 109, 34 P.P.C, registered at P.S Moya, after their bail plea was declined by the learned Sessions Judge Tando Muhammad Khan vide order dated 13.10.2021.

2.   The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3.   Per learned counsel for the applicants that at the time of incident the applicants/accused were not present at the place of incident but in the end while lodging F.I.R they have been implicated by saying that they have hatched conspiracy and instigated the main accused persons otherwise no evidence is available on the record. He further contended that applicants/accused are in jail and they are no more required for further investigation, therefore, no purpose would be served to detain them in jail for indefinite period. He lastly prayed for grant of bail.

4.   On the other hand learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh opposed for grant of bail by submitting that the names of applicants/accused appearing in the F.I.R and they have instigated the main accused persons, as such, they have committed the offence.

5.   I have heard the learned counsel for the applicants, learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh having also gone through the record available.

6.   No doubt at the time of incident both the applicants/accused were not present in the scene of offence but after registration of the F.I.R which is delayed for about 22 hours they have been shown that they have hatched the conspiracy and instigated the main accused persons for committing an offence otherwise they have not caused any kind of injury to the deceased or any other person nor any role has been assigned into the case except stated above. In the case of *QURBAN ALI Vs. THE STATE and others [2017 SCMR 279]* the Hon'ble Supreme Court of Pakistan has granted bail to accused who had not been attributed any act during occurrence except the role of raising lalkara and further held that in such circumstances Trial Court had to determine after recording pro and contra evidence, whether the applicant was vicariously liable for the act of his co-accused and that case was one of further inquiry. In the instant case the role assigned against the applicants/accused is that they had hatched the conspiracy and instigated the accused persons which are yet to be determined at trial as no evidence has been brought on record which could suggests that they have instigated the accused persons. The applicants/accused are in jail but they are no more required for further investigation, their further detention will not increase the case of prosecution. At bail stage only tentative assessment is to be made. Learned counsel for the applicants/accused made out a case for grant of bail in view of sub-section (2) of section 497 Cr.P.C, resultantly the instant bail application is allowed. The applicants/accused Muhammad Ameen Khokhar and Gulab Khokhar are enlarged on bail subject to their furnishing solvent surety in the sum of Rs.100,000/- each and P.R. bonds in the like amount to the satisfaction of learned Trial Court.

7.   Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

*Muhammad Danish**