

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

Criminal Bail Application No.S-615 of 2021
Criminal Bail Application No.S-629 of 2021

Applicants : 1.Muneer Ahmed through Mr. Zubair Ahmed
Khuhawar, Advocate.
2. Ali Hassan and Ghulam Murtaza through
Mir Naeem Talpur, Advocate.

Complainant : Abdul Nasir through Mir Parvez Akhtar Talpur,
Advocate.

The State : Through Ms. Rameshan Oad, A.P.G, Sindh.

Date of hearing : 13.09.2021.
Date of order : 13.09.2021.

ORDER

KHADIM HUSSAIN TUNIO, J:-By this common order, I intend to dispose of the above captioned criminal bail applications filed by applicants Muneer Ahmed, Ali Hassan and Ghulam Murtaza as the same are the outcome of one and same FIR bearing No. 34 of 2021 registered with Police Station Dilber Khan Mehar for the offences punishable u/s: 302, 324, 506(ii), 337-H(ii), 147, 148, 149 and 504 PPC.

2. The allegations, in nutshell, against the applicants are that on 08.06.2021, the complainant was available at a flour mill (*Atta Chakki*) along with his brothers Haji Muhammad, Azam Khan, his cousin Muhammad Anwar, Ameer Bux and his son Dawood Ali when at about 8:00 p.m. they were approached by the accused Asghar Ali, Ashraf and GhulamNabi all armed with a pistol and Ali Hassan armed with a repeater. After some heated arguments, Asghar Ali shot Haji Muhammad (deceased) in his head, Ashraf shot Dawood on his right leg whereas Ali Hassan and GhulamNabi shot at AmeerBux Lund, hitting him on shoulder. The three accused along with the applicant Ali Hassan left, whereafter the complainant party tried to shift the injured to the hospital, but heard cries nearby and saw accused Ghulam Mustafa and applicant Muneer Ahmed armed with pistols, applicant Ghulam Murtaza armed with a revolver, accused Arshad armed with a Repeater and accused Mukhtiar having a hatchet. They approached the complainant party, threatened them and made aerial firing while trying to fire upon the complainant party, the accused and applicants injured a

passerby namely Hafeez who got shot in his left hip. Thereafter, the culprits left and the complainant party shifted the injured in the hospital and the complainant's brother succumbed to his injuries. The complainant appeared at the police station the next day and lodged the FIR.

3. Learned counsel for the applicants collectively argued that the prosecution story is false and fabricated and that the applicants have been falsely involved in the present case; that there is a 18 hours delay in the lodging of FIR for which no plausible explanation has been provided; that the applicants did not cause any injuries to the deceased; that the complainant has admitted enmity between him and principle accused Asghar Ali and the present applicants are related to him hence falsely roped in the case; that the allegations levelled against the applicants are general in nature; that all the PWs are related to the complainant, hence interested and have been set up; and that the applicants are not previous convicts. They lastly prayed for the grant of bail to the applicants. In support of their arguments, learned counsel referred the case law reported as *2009 PCrLJ 110*, *2012 SCMR 1955*, *2018 PCrLJ Note 186*, *2019 SCMR 1458*, *2019 MLD 4*, *2020 SCMR 340*, *2020 SCMR 451*, *2020 SCMR 956*, *2020 SCMR 1814*, *2020 SCMR 340* and *2021 SCMR 540*.

4. Learned counsel for the complainant while strongly opposing the grant of bail to the applicants argued that the applicants have been named in the FIR with the role of causing injuries to the complainant party; that recoveries of weapons used in the offence were made from applicants; that the delay in the lodging of FIR has been explained; that sufficient material is available on the record to connect the applicants with the commission of the offence. He has referred the case law reported as *2021 MLD 669*. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicants.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. While it is an admitted position that the applicants have been named in the FIR with allegations of causing injuries to the PW Hafeez and Ameer Bux, they have not shot at the deceased Haji Muhammad. The allegations leveled against GhulamMurtaza and Muneer Ahmed are rather general and evidence has not been able to show as to who's bullet hit the injured Hafeez who was a passerby. Even otherwise, the said injury has been

declared by the Medico-Legal Officer as **337-F(iii)** or otherwise "*Ghayr-Jaifah-Mutalahimah*" punishable by three (03) years and does not fall within the prohibitory clause of S. 497 Cr.P.C. The allegation against Ali Hassan is collective as well as he is shown to have shot at injured Ameer Bux along with co-accused Ghulam Nabi and again, it has not been shown as to who's bullet hit the injured Ameer Bux. Again, the said injury has been declared by the Medico-Legal Officer as **337-F(iii)** or otherwise "*Ghayr-Jaifah-Mutalahimah*" punishable by three (03) years and does not fall within the prohibitory clause of S. 497 Cr.P.C. It is quite questionable in the eyes of this Court as to how the complainant claimed the incident to be an attempt at their lives, being on the assailants' mercy yet only received injuries on non-vital parts of the body and the same were mere flesh wounds, not being able to justify the intent to commit their murder. Even otherwise, the application of section 324 PPC is to be determined by the trial Court after proper recording of evidence and statements and consideration of all aspects of the case. Not only this, there is a delay of almost a day in the lodging of FIR for which no explanation has been provided even though the police station was only 12 km away from the place of incident. Enmity has been admitted by both the parties, *prima facie*, the possibility of spreading the net wide by the complainant party so as to falsely entangle as many accused as can-be cannot be ruled out. In this regard, I am also fortified with the observation of Hon'ble Supreme Court of Pakistan while dealing with the case of *Subeh Sadiq alias Saboo alias Kalu v. The State and others* (**2011 SCMR 1543**). The applicants Ali Hassan and Ghulam Murtaza also surrendered before the police voluntarily after getting bail from the Court and recorded their 161 Cr.P.C statements before the police. As far as the recoveries from applicants Ali Hassan and Ghulam Murtaza are concerned, the same were effected after 24 days of the incident and therefore it can safely be said that the same are inconsequential to their case of bail. Similarly, nothing was recovered from applicant Muneer Ahmed that would connect him with the commission of offence. From further perusal of record, it is apparent that the role of causing injuries to deceased has not been assigned to the applicants; therefore, question of vicarious liability requires further inquiry and shall be determined by the trial Court. In similar circumstances, the Hon'ble apex Court in cases of *Yaroo v. The State* (**2004 SCMR 864**), *Muhammad v. The State* (**1998 SCMR 454**) and *Pir Bux v. The State* (**2012 SCMR 1955**) had been pleased to grant bail to the applicants/accused. The investigation of the case

has already been finalized and challan has been submitted, thus the physical custody of the applicants is no longer required.

7. In a case of *Wajid Ali v. The State and another* (2017 SCMR 116), the Honourable Apex Court has observed as under:--

"5. From the contents of the FIR, it cannot be outrightly said that there was a common intention to commit crime. It prima facie appears that repairing of the common wall was the reason that provoked the accused. The conclusion that there was common intention can only be reached after the evidence in the matter comes on the record. So far as the role of causing injury on the person of the complainant is concerned, it is admitted position that the said injury was reported to be ghair jaifa. The petitioner in this view of the matter cannot be kept behind the bars for an indefinite period. In the circumstances, the petitioner has made out a case for post-arrest bail. This petition is therefore converted into appeal and is allowed and the impugned order is set aside. Petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.300,000/- with two sureties in the like amount to the satisfaction of Trial Court".

8. The recent case before the Hon'ble Apex Court in **Criminal Petition No. 529 of 2021** dated 14.07.2021 titled *Iftikhar Ahmad v. The State* reiterated the long standing principle that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception. The learned counsel for the State and the learned counsel for the complainant could not show this Court any such circumstance or conduct of the applicants that would bring their case under exception to the rule of granting bail in such offences.

9. For what has been discussed herein above, the applicants have made out their case for grant of post-arrest bail and consequential of the above, they were granted bail vide short order dated 13.09.2021. These are the detailed reasons for the same.

10. Needless to mention here that the observations made hereinabove are of tentative nature and shall have no effect upon the trial Court to decide the matter on merits.

JUDGE