

IN THE HIGH COURT OF SINDH, SUKKUR BENCH, SUKKUR
Criminal Bail Application No.S-782 of 2021
Criminal Bail Application No.S-754 of 2021

Applicants in Cr. Bail Application
No.S-782 of 2021: Muhammad Hussain and others
through Mr. Shabbir Ali Bozdar,
Advocate.

Applicants in Cr. Bail Application
No.S-754 of 2021: Abdul Haque and others through
Mr. Shamsuddin N. Kuber,
Advocate

Complainant: Through Mr. Nawab Khan Pitafi,
advocate

State: Through Syed Sardar Ali Shah,
Deputy Prosecutor General

Date of hearing: 07.03.2022

Date of decision: 07.03.2022

ORDER

Zulfiqar Ali Sangi, J: Through these applications, applicants Muhammad Hussain, Muhammad Hassan, Naveed and Abdul Sattar, in Cr. Bail Application No.S-782 of 2021, while Applicants namely Abdul Haque, Abdul Ghaffar, Abdul Rashid and Abdul Wahab in Cr. Bail Application No.S-754 of 2021, seek their **pre-arrest bail** in Crime No.195 of 2021, registered at P.S Daharki, District Ghotki, for offences punishable u/s 302, 324, 147, 148, 149, 429 PPC as earlier their bail applications were declined by learned Additional Sessions Judge, Daharki vide order dated 19.11.2021, hence these applications.

2. The facts of the prosecution case according to FIR No.195/2021 date 24.7.2021 lodged by Ahsan Ali Dehar at P.S Deharki are that Mst. Hameedan aged 60/62 years is mother of complainant has agricultural land measuring (9-1/2) acres situated near Mangrai petrol pump Deharki, he himself cultivate and look after the land thereafter accused Anwar Dehar and others demanded said land, but complainant refused to sale said land there after accused Anwar Dehar and others did not allowed to cultivate the said land same land is uncultivated there after Anwar and other issued threats and said that they will see them. On 23.7.2021 complainant along with his father Nehal khan, mother Mst. Hameedan, brother Liaquat Ali, sister in law Mst. Shameem w/o Mohbat, maternal cousin Abdul

Haleem, Mst. Naseem w/o Liaquat Ali, Mst. Shahnaz w/o khadim Hussain, were present in their house, at about 06:00 pm evening time, they saw accused each 1. Anwar s/o Tahir armed with pistol 2. Waheed s/o Abdul Haq armed with Raffle 3. Muhammad Hussain s/o Abdul Hakeem armed with pistol 4. Gulzar alias Gulo s/o Tahir armed with pistol 5. Fayaz s/o Nawaz armed with hatchet, 6. Muhammad Hussain s/o Abdul Hakeem armed with rifle 7. Muhammad Nawaz s/o Tahir armed with lathi, 8. Shazado alias Dodo s/o Tahir armed with iron rod 9. Naveed s/o Abdul Haq armed with iron rod 10. Abdul Haque s/o Haji Allah Wasayo armed with iron rod all by caste Dehar r/o village Dodo Khan Taluka Deharki 11. Abdul Sattar s/o Gul Shir alias Gul armed with iron rod 12. Abdul Ghaffar s/o Gul Shir alias Gul armed with hatchet 13. Abdul Rashid s/o Yar Mohammad armed with iron rod, 14. Abdul Wahab s/o Gul Shir alias Gul armed with iron rod all by caste Dehar r/o near Angria petrol pump Taluka Deherki and two un-known armed with K.Ks, the faces were open entered into the house, accused Anwar gave Hakal and said that he have did not give the land and mother of complainant filed case in the court against them today they will murdered. On saying so accused Anwar made straight fire with intention to commit murder upon mother of complainant namely Mst. Hameedan which hit her on head beside temple, accused Waheed caused straight fire of rifle which intention to commit murder upon Mst. Hameedan which hit her on abdomen she raised cries and fell down on earth, accused Muhammad Hassan made straight fire of pistol with intention to commit murder upon sister-in-law of complainant Mst. Naseeman which hit her on head she fell down, accused Gulzar @ Gulo made straight fire of pistol with intention to commit murder upon maternal cousin Abdul Haleem which hit him on mouth who feel down, accused Fayaz caused hatchet blow to maternal cousin Abdul Haleem which hit him on mouth, accused Abdul Sattar caused iron rod with intention to commit murder upon father of complainant namely Nehal khan which hit him on back and bellies, accused Abdul Ghaffar caused hatchet blow with intention to commit murder upon father of complainant namely Nehal which hit him on head, accused Abdul Rashed caused iron blow with intention to commit murder upon brother of complainant namely Liaquat Ali which hit him on right leg. Accused Muhammad Hussain made straight fire of rifle with intention to commit murder upon Nehal khan same was missed and hit to black colour buffalo same trembling and died on spot, Accused Nawaz

caused lathi blow to sister-in-law of complainant namely Mst. Shamim which hit her on head, accused Shahzado @ Dodo caused iron rod with intention to commit murder upon liaquat which hit him on left leg, Accused Abdul Wahab caused iron rod with intention to commit murder upon brother of complainant liaquat which hit him on cover of right leg knee, Accused Abdul Haq caused iron rod upon sister-in-law Mst. Shahnaz w/o Khadim Hussain which hit her on elbow of right arm, thumb and right side temple, on the voice of firing and crises brothers of complainant namely Muhabbat, Qurban and neighbourers came running. Thereafter all accused along with weapons iron rods and lathies went away, thereafter complainant saw that mother Hameedan, father Nehal khan, brother liaquat maternal cousin Abdul Haleem, sister-in-law Mst. Shahnaz and sister-in-law Mst. Naseeman were fallen down on earth, blood was oozing and they were trembling, complainant party took all the injured and came at civil hospital Daharki and obtained letter for treatment from police, thereafter all the injured were referred to Rahim Yar Khan in serious condition, thereafter Complainant along with injured went to Rahim Yar Khan in the way the mother of complainant Mst. Hameedan, in presence of complainant died, thereafter complainant arrange conveyance and took the body of deceased Mst. Hameedan with the help of witnesses and sent the above named injured to Rahim Yar Khan, thereafter complainant came at P.S and obtained letter for postmortem, after postmortem the dead body of Mst. Hameedan shifted to the village and buried and after funeral ceremony appeared at P.S and lodged the FIR.

3. Learned Counsel representing the Applicants, at the very outset, submits that applicants/accused are quite innocent and have been falsely implicated by the Complainant due to enmity, which fact has also admitted in the contents of FIR; that there is delay of about 25 hours in lodging of FIR; that there was counter case registered by the present applicants bearing FIR No.227/2021 wherein date and time of incident are same and four persons were injured; that there is contradiction between the ocular and medical evidence; that according to contents of the FIR, the role against the applicant Muhammad Hussain is that he had made straight fire from his rifle upon the father of complainant but said fire hit to buffalo and buffalo was died at the spot; however no any medical certificate was available even no specific injury of buffalo is mentioned in the FIR nor in

mushirnama; that the complainant party had involved the entire male members of one family; that the statements under Section 161 Cr.P.C of the PWs have been recorded after the delay of more than six days after lodgment of FIR; that all the PWs are kith and kin of the Complainant and prepared false and managed story to put pressure upon the applicant party; that there is no reasonable ground to believe that the offence has been committed by present applicants/accused.

4. Conversely, learned Counsel representing the Complainant vehemently opposed the grant of bail to the applicants on the ground that the applicants are nominated in FIR with specific role of causing injuries resulting a person has lost his life and several persons received injuries, hence they do not deserve any concession of bail; besides offence fall within prohibitory clause of Section 497 Cr.P.C, therefore, bail applications may be dismissed.

5. Learned DPG, while adopting the arguments of learned Counsel for the Complainant, also opposed the grant of bail on the ground that active role of causing firearm injuries, lathies and iron rod blows has been attributed to the applicants/accused owing to which an innocent person lost his life; that complainant as well as PWs in their statements have specifically nominated them in the commission of offence; that ocular account is supported by medical report issued by doctor, hence they do not deserve for confirmation of their pre-arrest bail.

6. I have heard learned Counsel representing the Applicants/ Complainant as well as learned DPG and have gone through the material available on record with their able assistance.

7. Perusal of record reflects that the role of applicant Muhammad Hussain is that he made straight fire from his rifle in order to commit murder of father of Complainant, which hit to buffalo, the buffalo was died at spot, whereas, applicant Muhammad Hassan made straight fire with pistol upon Mst. Naseema, which hit her on head, she fell down while applicants Naveed and Abdul Sattar caused iron blows to father of complainant and PW Liaquat, respectively, whereas, Applicant Abdul Haq caused iron rod upon Mst.Shahnaz, which hit her on elbow of right arm, applicant Abdul Ghaffar caused hatchet blow to the father of complainant, which hit

him on head, applicant Abdul Rashid and Abdul Wahab caused iron rod to Liaquat Ali which hit him on right leg as well as right leg knee, respectively. Applicants/accused were armed with weapons caused blows to all the witnesses, therefore, in the alleged offence one innocent lady has lost her life. The tangible and sufficient evidence is available on record, which showing the spur movement of applicants/accused, so that such incident took place and innocent person lost his life. The medical evidence is in line with ocular account as narrated by the complainant in his FIR. As such applicants/accused have played specific role in the commission of offence.

8. Contention of learned Counsel that counter FIR was registered against the Complainant party by the Applicant party therefore it is to be determined after recording the evidence that which party was aggressor and this ground alone is sufficient to grant bail to the applicants, has no legal force in view of the fact that the applicants are nominated in FIRs with their specific roles. Admittedly, applicants are nominated in the FIR with specific role and both the parties have suppressed the facts about the injuries received by each party and even fatal shot received by deceased, therefore, they are not entitled for concession of bail. Reliance in this regard can be placed on the case of *Shahryar Khan vs. The State and others* (2020 SCMR 1436) wherein Hon'ble Apex Court has observed as under:-

“It would be less than expedient to comment upon the merits of the prosecution case, bracing a cross version set up on an injury, sustained by the co-accused, pressed into service with vehemence to construct hypothesis of self defence, a controversy to be best settled by the trial Court. Argument regarding suppression of injury sustained by Majid, co-accused, in the face of identical suppression in the cross version regarding the fatal on to the deceased, does not bring petitioner’s case at a higher pedestal so as to be received with favour. Saddled with the responsibility of the fatal shot, petitioner’s absence from law, additionally, stands in impediment to his release on bail. Given the role attributed to the petitioner, existence of a cross version, veracity whereof is yet to be settled, by itself would not bring his case within the purview of further probe. Petition fails. Leave declined”.

9. Further the counter version by itself cannot be pressed into service as of right for grant of bail unless there is a scope of further inquiry in the matter. **Nasrullah Khan v. Mst. Baskhandana and**

another (1997 MLD 2071) even otherwise the ground that in cross-case persons charged for having injuries have been released on bail is no ground to grant bail particularly when allegations against accused are mere serious. **Imranuddin and another v. The State (1983 SCMR 278)** the plea that bail should be allowed in every case which had a counter-version is not a hard and fast rule, and case has to be examined on its own merits and circumstance. **Arbelo and 2 others v. The State (2013 P Cr L J 155)**.

10. It is settled principal of law that deeper appreciation of evidence is not permissible while deciding the bail plea of the accused and material collected during investigation is to be assessed tentatively. From the tentative assessment of material available on the record in shape of FIR, statements of the witnesses recorded under section 161 Cr.P.C including medical evidence, prima facie, there appears sufficient evidence/material against the applicants which connect them with the commission of offence in which **one innocent lady lost her life and several persons were received injuries**, therefore, the applicants are not entitled for concession of bail. Resultantly, these bail applications are dismissed. Interim bail granted to them vide orders dated 25.11.2021 and 06.12.2021 are hereby recalled.

11. The observations made hereinabove are tentative in nature and shall not prejudice the right of either party at the trial.

12. The captioned bail applications are decided in the above terms.

JUDGE