

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

Criminal Bail Application No.S-46 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

15.03.2021

Mr. Aijaz Ahmed Chandio, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G for the State.

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ORDER

Irshad Ali Shah J:- It is alleged that the applicant with the rest of the culprits after having formed an unlawful assembly and in prosecution of their common object beside committing murder of Akber, caused injuries to PWs Mukhtiar Ali, Gul Bahar, Ahmed Khan and complainant Ghulam Qadir with fire shot, iron rods, lathies and hard blunt substance, for that the present case was registered.

2. The applicant on having been refused post arrest bail by learned Additional Sessions Judge-I(MCTC), Tando Adam has sought for the same from this Court by way of making instant application u/s 497 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party in order to satisfy its grudge with him; the FIR has been lodged with delay of about one day; 161 Cr.P.C statements of the PWs have been recorded with further delay of about five days; unspecified injury sustained by the deceased is attributed to the applicant; there is conflict between medical and ocular evidence; therefore, the applicant is entitled to grant of bail on point of further inquiry. In support of his contention he has relied upon case of

Muhammad Ramzan vs The State and others
(2016 SCMR 2046).

4. Learned A.P.G for the State has opposed to grant of bail to the applicant by contending that he has actively participated in commission of incident by causing lathi blows to the deceased and on arrest from him has been secured such lathi.

5. I have considered the above arguments and perused the record.

6. The applicant is named in FIR with specific allegation that he with rest of the culprits in prosecution of their common object went over to the complainant party not only committed death of the deceased by causing him injuries with some hard and blunt substance but also caused injuries to complainant and his witnesses with fire arm and hard and blunt substance. The injury to the deceased with lathi is attributed to the applicant. In that situation, it would be premature to say that the applicant being innocent has been involved in this case falsely by the complainant party. The delay of one day in lodgment of FIR is explained in FIR itself and same even otherwise could not be resolved by this Court at this stage. The 161 Cr.P.C statements of the PWs might have been recorded with delay of five days, but such delay could have occurred for the reason that the witnesses being injured were undergoing treatment. On arrest from the applicant has been secured the lathi, which he allegedly used in commission of incident, such recovery could not be lost sight of. The conflict between medical and ocular evidence may be there, but same could not be resolved by this Court. The deeper appreciation of facts

and circumstances is not permissible at bail stage. There appear reasonable grounds to believe that the applicant is guilty of the offence with which he is charged.

7. The case law which is relied upon is on distinguishable facts and circumstances. In that case, accused was admitted to bail for the reason that there was cross version of the incident. In the instant matter, there is no cross version of the incident.

8. In view of above, it could be concluded safely that no case for grant of bail to the applicant is made out, consequently, the instant bail application is dismissed.

JUDGE

Ahmed/Pa.