

IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.

Crl. Bail Appln. No. S- 213 of 2021.

Applicant: Abdul Latif Kodrani, through Mr. Habibullah G. Ghouri,
Advocate.

The State: Through Mr. Muhammad Noonari, DPG.

Complainant: Azam Ali, through Mr. Mazhar Ali Mangan, Advocate.

Date of hearing: 02.08.2021.
Date of order: 06.08.2021.

ORDER

Adnan-ul-Karim Memon, J:- Applicant Abdul Latif son of Hidayatullah Kodrani, seeks indulgence of this Court against the order dated 07.05.2021, passed by the learned 1st Additional Sessions Judge/MCTC, Larkana, whereby post-arrest bail was denied to him in FIR No.60/2019, Police Station Ratodero, for offenses punishable under Sections 302, 114, 337-H (2), 148 and 149 P.P.C.

2. The accusation against the applicant is that on 02.6.2021, he aimed pistol upon the complainant and in the meanwhile his accomplice Ghulam Akbar instigated co-accused to kill the complainant's brother Imdad Ali, to which main accused Muhammad Sallah fired from his repeater upon Imdad Ali which hit him at his left nipple, the other accused also did the same act resultantly and succumbed to his injuries and died. Such report of the incident was lodged at Police Station, Ratodero promptly.

3. Learned advocate for the applicant/ accused has contended that applicant did not cause any injury to deceased, he was assigned role of aiming his pistol upon the complainant/ making aerial firing, vicarious liability can only be determined at the time of trial, motive is shown against co-accused and same was not attributed to present applicant, case against present applicant requires further inquiry. He has next contended that applicant was unaware about his implication in this case. Lastly, he has prayed for grant of bail to the applicant in the interest of justice.

4. On the other hand learned counsel for the complainant has argued that the order of the learned trial is well reasoned as the applicant was rightly

refused post arrest bail in a promptly lodged FIR; that eye-witness of the incident has assigned specific role of pointing his weapon upon complainant party thereby restraining them for accomplishment of murder of deceased so also he made aerial firing; that complainant's version is fully supported by ocular and medical evidence; that alleged offence carries capital punishment; that not only this but after lodging of subject FIR by complainant party, present applicant along with his companions attacked upon complainant party, for which separate FIR was lodged as FIR No. 13/2019 at PS Waris Dino Machi and he remained absconder and was declared as proclaimed offender by the learned trial court. He also created hindrances in conclusion of trial as he did not engage Advocate for conduct of trial but he is only interested for bail matter, therefore at this stage, applicant is not entitled for concession of bail and he prayed for dismissal of the bail plea.

5. I have heard learned counsel for the applicant as also the Deputy Prosecutor-General, appearing on behalf of the State duly assisted by the 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 name of present applicant is transpiring in the FIR with his specific role that he pointed his weapon upon complainant party so also made aerial firing, and he repeated the offence by attacking upon complainant party for which he was also booked in separate FIR; and he was declared as proclaimed offender. Prima-facie the role of the applicant as portrayed in the F.I.R is that he pointed his weapon upon complainant party so also made aerial firings, but the concession of bail was declined to the applicant on the ground that he was fugitive from law and not 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 the bail. I am, prima facie, of the view that the learned trial Court has not appreciated the facts and circumstances of the case in its true perspective while declining bail to the applicant. Prima-facie no overt act had been ascribed to the applicant save for pointing his pistol and alleged ineffective firing, there is no injury by means of pistol, though the applicant was stated to be armed with pistol, but he did not cause any injury to the complainant party which factum also needs to be proved because no recovery of pistol made from the applicant. Only main accused was attributed fatal blow to

deceased. The question of vicarious liability of the applicant will be determined at the trial. In this view of the matter, it is a case of further inquiry covered by section 497(2), Cr.P.C. Adverting to the arguments that applicant also assaulted on the compliant party, prima-facie such case is stated to be pending and shall be decided on its merit and it is for the trial court to look into that aspect after recording of the evidence of the parties whether the assault was in connection with the previous case or otherwise.

7. For the foregoing reasons, this bail application is accepted and the applicant is directed to be released on bail in FIR No.60/2019, Police Station Ratodero, subject to furnishing a solvent surety in the sum of Rs.1,00,000 (One hundred thousand rupees) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

8. Needless to mention that the above observations and discussion are only tentative in nature and shall not come in the way during the trial in arriving at a just and fair decision, based on the evidence to be adduced at trial.

Judge

Ansari