

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

Crl. Bail Appln. No. S- 631of 2020.

Applicant: Noor Hussain @ Nooro Junejo, through Mr. Andal Khan Narejo, Advocate.

The State: Through Mr. Muhammad Noonari, DPG.

Complainant: Ghazi son of Muhammad Ismail (*called absent though with served*).

Date of hearing: 02.08.2021.

Date of order: 06.08.2021.

ORDER

Adnan-ul-Karim Memon, J:- Applicant Noor Hassan @ Nooro son of Muhammad Sharif, seeks indulgence of this Court against the order dated 19.10.2020, passed by the learned Sessions Judge, Shikarpur, in Cr. B.A.No.1384 of 2020, whereby post-arrest bail was denied to him in FIR No.19/2020, Police Station Gaheja for offenses punishable under Sections 302, 337-H (2), 148 and 149 P.P.C.

2. The accusation against the applicant is that on 15.6.2020, he along with his accomplices reached the place of incident as disclosed in the memo of FIR, and main accused Ahmed Ali and other co-accused fired from their respective weapons on Wahid Bux maternal uncle of the complainant who succumbed to the injuries and died. Such report of the incident was lodged on 16.06.2020 with Police Station, Gaheja.

3. Learned counsel for the applicant has mainly contended that no active role has been assigned to the applicant in the aforesaid crime and he has been shown merely present along with co-accused at the scene of the incident and made aerial firing; that the complainant has admitted the enmity in the FIR as such false implication of the applicant could not be ruled out; that during his arrest nothing could be recovered from the possession of the applicant. He prayed for the grant of bail to the applicant.

4. Learned DPG has supported the impugned order dated 19.10.2020 and argued that the applicant has been nominated in F.I.R showing his presence at spot duly armed with pistol; that the PWs have supported the version of the complainant; that FIR was promptly lodged; that the applicant is vicariously

liable for the action of his accomplices; that he is involved in the heinous crime, carrying death penalty as such at this stage he is not entitled to the concession of bail.

5. I have heard the learned counsel for the parties and perused the material available on the record.

6. Prima facie, no active role has been assigned to the applicant in the alleged crime; however, the learned trial court declined bail to him on the premise that no doubt applicant is not assigned any role but his arrival at the scene of offense duly armed with pistol along with co-accused reflect that he had a common objection and he is vicariously liable for acts of his companions. Prima facie this is hardly ground to refuse the bail to the applicant. Besides the above, no recovery of the alleged pistol has been affected by the applicant at the time of his arrest or during the investigation. The factual position as well as other aspects of the case bring the case of the applicant within the purview of section 497(2) Cr.PC.

7. Before parting with this order, it is important to note that the Honorable Supreme Court in its recent pronouncement has held that the courts below have not been exercising their discretion while declining bail to the accused, under subsection (1) of Section 497 Cr. P.C, under the principle of law enunciated by the Honorable Supreme Court regarding grant of bail in offenses not falling within the prohibitory clause of that subsection. It is further held that the learned courts below simply relied, for declining bail, on the incriminating material available on the record to connect the accused with the commission of the offenses alleged. Primarily, the main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society if there is an apprehension of repetition of offense or commission of any other untoward act by the accused. The basic principle in bail matters in such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of (a) his absconding to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offense keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offense alleged. In the light of the principles set forth by the Honorable Supreme Court in post-arrest bail matters, as discussed supra, the

impugned order passed by the learned trial Court is thus not sustainable under the law and liable to be reversed on the aforesaid analogy. On the aforesaid proposition, I am fortified with the decisions of the Honorable Supreme Court rendered in the cases of Tariq Bashir v. State PLD 1995 SC 34; Imtiaz Ahmad v. State PLD 1997 SC 545; Subhan Khan v. State 2002 SCMR 1797; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488.

8. In the light of the above facts and circumstances of the case the applicant has made out a case of post-arrest bail. Resultantly, he is admitted on post-arrest bail in FIR No.19/2020, Police Station Gaheja for offenses punishable under Sections 302, 337-H (2), 148 and 149 P.P.C, subject to his furnishing solvent surety in the sum of Rs.100,000/- (One hundred thousand rupees) and P.R bond in the like amount to the satisfaction of the learned trial court.

9. The observations made hereinabove shall not prejudice the case of either party at the trial.

Judge

Ansari