

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

Crl. Bail Appln. No. S- 279 of 2021.

Applicant: Badal Bariro, through Mr. Nooruddin Mahessar, Advocate.

The State: Through Mr. Muhammad Noonari, D.P.G.

Complainant: Muhammad Ameen, through Mr. Ahsan Ahmed Quraishi, Advocate.

Date of hearing: 02.08.2021.

Date of order: 06.08.2021.

ORDER

Adnan-ul-Karim Memon, J:- Applicant Badal son of Muhammad Azeem @ Raheem Dino, seeks indulgence of this Court against the order dated **20.05.2021**, passed by the learned Additional Sessions Judge-1/MCTC, Larkana, whereby post-arrest bail was denied to him in FIR No.120/2021, Police Station Civil Line, registered for offenses under Sections 302, 114, 148 and 149 P.P.C.

2. The accusation against the applicant is that he aimed his pistol at the complainant party at the time of the alleged incident which allegedly took place on **18.12.2020** and his accomplices murdered Amanullah. Such report of the incident was lodged on 18.12.2020 with Civil Line Police Station, District Larkana.

3. Learned counsel for the applicant contended that the applicant was implicated in the F.I.R on the accusation of aiming pistol upon the complainant party, therefore, he cannot be saddled with murder of deceased and the alleged recovery of pistol was foisted upon him by police in connivance with the complainant party. The learned trial Court has not taken into account the above circumstances of the case and has proceeded on the basis of conjecture. He further argued that where the liberty of a citizen is involved such conjectural considerations cannot be a basis for declining bail. He further argued that case of the applicant requires further inquiry into his guilt under section 497(2), Cr.P.C. He lastly prayed for admission of the applicant on Post arrest Bail in the crime discussed supra.

4. Learned counsel for the complainant has argued that the applicant is nominated in the F.I.R with his name, parentage and the weapon carried by him at the time of incident and fully facilitated the principal accused. He further argued that in heinous crimes leading to the loss of human life without any legal justification and brutal killing at the whims of unscrupulous criminals, in such circumstance the accused should be discouraged; that evidence available against the applicant should be weighed with great care and caution at the bail stage and in such circumstances, Court should ignore the technicalities; rather examine the evidence in a dynamic, and pedantic manner so that the true culprit should be brought to book. He lastly prayed for rejection of his Post Arrest Bail.

5. I have heard learned counsel for Applicant, learned D.P.G for the State as well as learned counsel representing the Complainant and perused the material available on record.

6. I am conscious of the fact that while deciding a bail application this court has to make tentative assessment of the record. In this regard I am fortified by the decision of Honorable Supreme Court of Pakistan rendered in the case of *Shahzad Ahmed v. The State (2010 SCMR 1221)*.

7. Tentative assessment of record reflects that there was a dispute between the parties and in this regard no independent ocular testimony has come on record yet as to whether the applicant was involved in the murder of deceased, the brother of the complainant, as the record shows that the deceased was hit with one bullet, attributed to the main accused, such narration requires evidence to be recorded by the learned trial Court. Prima facie, in the instant case, the applicant was present at the time of alleged incident, so he had played no role in causing death of the deceased and the applicant's involvement in the aforesaid crime on the basis of aiming pistol at the complainant is yet to be determined by the learned trial Court, therefore, case of the Applicant requires further enquiry as provided under section 497(2), Cr.P.C.

8. During the arguments learned counsel for the applicant has placed on record the certified copy of the judgment dated 30.6.2021, passed by the learned 1st Additional Sessions Judge, Larkana in Sessions case No.124/2021 (*Re: the State v. Badal son of Muhammad Azeem alias Rahim Dino Buriro*) whereby the applicant has been acquitted from the crime No.6/2021 of Police Station Civil

Line, for offences under section 23(i) Sindh Arms Act, which is offshoot of the present crime No.120/2020. Learned counsel emphasizes that so far as the alleged recovery of pistol from the applicant is concerned he has been acquitted.

9. I have noticed that prima facie the deceased has not received any injury from the hands of applicant. Beside this it is settled principle of law that benefit of doubt in such circumstances could be extended to the accused even at the bail stage. So far as vicarious liability is concerned for the offence which prima facie is a ground for further inquiry into the guilt of an accused. On the aforesaid proposition I am fortified by the decisions of hon'ble Supreme Court in the case of *Attaullah v. the State through AG Khayber Pakhtoonkhah and another* (2020 SCMR 445) *Muhammad Faisal v. the State and another* (2020 SCMR 971) and *Allahnawaz v. the State and another* (2004 SCMR 1175).

10. In view of above facts, circumstances and law, the Applicant has made out a case of post arrest bail. Accordingly, the Applicant is granted bail in FIR No.120/2021, Police Station Civil Line, registered for offenses under Sections 302, 114, 148 and 149 P.P.C. subject to 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 trial Court.

11. Needless to mention here that any observation is made in this order is tentative and shall not affect the merits of the case.

Judge