

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appl. No.S-322 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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09.05.2022.

Mr. Ahsan Gul Dahri, Advocate for applicants.
Mr. Muhammad Noonari, D.P.G. for the State.
Mr. Ayaz Ali Gopang, Advocate for complainant.

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ZULFIQAR AHMED KHAN, J: Through this bail application, the applicants / accused Aijaz Ali and Shahzad seek post arrest bail in Crime No.06 of 2021, registered at PS B-Section, Nawabshah for offence under Sections 302, 114, 427, 506/2, 337-H(ii), 337-L(ii), 34 PPC. Earlier on approach their bail application was declined by learned Vth Additional Sessions Judge / MCTC, Shaheed Benazirabad vide order dated 12.10.2021.

2. Facts of the case are already mentioned in the memo of bail application as well as FIR hence not need to reproduce the same.

3. Learned counsel for the applicants has mainly contended that the applicants are innocent and have falsely been implicated in the case in hand; that the FIR is delayed by one day without any plausible explanation; that though the names of applicants / accused are mentioned in FIR but they are shown empty handed and no specific role of causing injury to the deceased has been alleged against them; that as per FIR the allegation against the applicants is that they caught hold of deceased from his arms and took him into a narrow street which is unbelievable and not appealing to a prudent mind because at the time of incident deceased neither tried to run away nor resisted or cried to rescue himself which requires further inquiry particularly when the deceased was available with his father and two other relatives at the time of incident; that no any independent person has been shown as witness though the place of incident is a thickly populated area and the PWs shown in the FIR are

interested and relatives to each other; that nothing incriminating has been recovered from the possession of applicants / accused though they had remained in police custody; that co-accused Jaffer had already been granted bail by this court and the case of present applicants is on better footings to that of co-accused. Lastly, it is submitted that the applicants / accused have been remanded to jail custody and are no more required for further investigation. In support of his contentions, learned counsel has placed reliance on the case law reported as 2021 SCMR 1802.

4. On the other hand learned D.P.G appearing for the State as well as learned counsel for the complainant vehemently opposed the bail application on the ground that names of the applicants / accused are mentioned in FIR with specific role of catching hold of the deceased from his arms and facilitating the main accused Zeeshan who committed the murder of deceased by causing him pistol firearm injury; that ocular evidence is supported by medical evidence; that case of co-accused Jaffer who has been granted bail by this court is on different footings from the case of present applicants / accused. In support of their contentions, reliance has been placed on the cases reported as 2002 P.Cr.L.J 1277 and 2011 SCMR 1332.

5. I have heard the learned counsel for the applicants, learned D.P.G for the State as well as learned counsel for the complainant and have gone through the material available on record with their assistance.

6. A bare reading of the FIR reflects that the allegation against the applicants / accused is that they were empty handed and caught hold of deceased from his arms whereas co-accused Zeeshan made pistol fire upon the deceased and committed his murder. The main allegation of causing firearm injury is attributed to co-accused Zeeshan and the presence of applicants / accused by catching hold of deceased from his arms and dragging him to a narrow street is unbelievable as apparently, the deceased, as alleged in the FIR did not make any resistance nor he

made cries or tried to escape himself from the clutches of accused persons nor any help came from his father (the complainant) and two other persons who were present at the place of incident. There is also delay of about one day in lodging the FIR which has not been plausibly explained by complainant party. There is also no mention of the applicants / accused in the first information given by complainant party to the police which is evident from roznamcha entry No.24 dated 08.01.2021. The inquest report also reveals that police was informed by Farman that only Zeeshan had killed the deceased. Co-accused Jaffer who admittedly owned the double cabin vehicle and as per FIR was armed with repeater, restrained the complainant party and instigated the others to kill Haseeb, has already been granted bail by this court hence on the rule of consistency, the same treatment is to be provided to the applicants who have stronger case than co-accused Jaffer. Moreover, the memo of inspection of place of incident shows that the blood of deceased was collected from inside of shop which is contrary to the complainant's version that deceased was murdered in a street. The role assigned to the applicants / accused on the point of vicarious liability requires further inquiry. Rightly reliance has been placed upon the case 2021 SCMR 1802, wherein the Honourable Supreme Court has held as under:-

“Be that as it may, though named in the crime report alongside others of the same brotherhood, the petitioner is assigned role of a facilitator by holding the deceased alongside four others; the question is as to whether in the facts and circumstances of the case as alleged by the complainant himself, such facilitation was at all required, that too, without incurring fatal risk of being unintendedly hit by the shot in the darkness and as such petitioner's culpability requires further probe within the contemplation of subsection (2) of section 497 of the Code of Criminal Procedure, 1898, paving way for his release on bail, particularly when his continuous detention is serving no useful purpose. The petition is converted into appeal and allowed; the appellant is admitted to bail on his furnishing bond in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of the learned trial Court.”

7. In the view of above facts and circumstances of the case, I am of the view that applicants / accused have succeeded to make out a case for further inquiry. Resultantly, this bail application is allowed and applicants are admitted to post arrest bail subject to their furnishing solvent surety in the sum of Rs.2,00,000/-(Rupees two lac) each and P.R bonds in the like amount to the satisfaction of the trial Court.

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

JUDGE

Tufail