

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.1872/2017

Applicant : Mir Hazar Khan.

Respondent : The State.

CR. BAIL APPLICATION NO.1907/2017

Applicants : Muhammad Saleem and Shahnawaz.

Respondent : The State.

Syed Mehmood Alam Rizvi advocate for applicant in Cr. Bail Application No.1872/2017.

Mr. Ahmed Ali Ghumro advocate for applicants in Cr. Bail Application No.1907/2017.

Mr. Abrar Ali Khichi, APG.

Mr. Muhammad Manzoor appeared on behalf of Mr. Muhammad Nizar Tanoli advocate.

Date of hearing : 14.11.2018.

Date of order : 14.11.2018.

JUDGMENT

Salahuddin Panhwar, J: Applicants in captioned bail applications, were granted ad-interim pre arrest bail by this court on 05.12.2017 and 12.12.2017 respectively, in Crime No.290/2017, u/s 302/324/34 PPC, PS Jamshed Quarter, Karachi. Today the matter has come up before this court for confirmation or otherwise.

2. Concisely, prosecution case is that complainant Riaz Hussain lodged the FIR on 01.09.2017 at PS Jamshed Quarters, Karachi. through his statement U/s 154 Cr.P.C. alleging therein that there is previous enmity with Mir Hazar Muree, Shah Nawaz, Shahzad, Saleem and one unknown; that Sahib Khan has got registered a case of quarrelling against Mir Hazar Khan at Hyderabad and the accused persons have also got registered cases against his father Sahib Khan and uncle Ali Akbar; that on 31.08.2017 bail was granted to his father in two cases, therefore his relatives Muhammad Ibrahim S/o Ghulam Rasool, posted as HC at P.S.Gizri and Muneer Ahmed S/o Muhammad Urs went to central jail on motorcycle bearing registration No:HAW-0082; that the complainant was at Al-Karam Square Liaquatabad where he received information on phone at 9.30 p.m. that his father Sahib Khan and Muhammad Ibrahim had received bullet injuries and were in JPMC; that on receiving such information complainant alongwith his relatives went to JPMC where Muhammad Ibrahim was under treatment in emergency ward, while dead body of his father was lying in mortuary, who had received bullet injury on his head. It was reported that that the police completed formalities and got conducted postmortem; that injured M. Ibrahim informed that when he was taking away Sahib Khan on motorcycle in between 8.00 p.m. to 9.00 p.m. and when reached at Jamshed road near Baitul Salam Masjid then on one motorcycle Mir Hazar Marri alongwith one unknown person came and with intention to kill them the accused Mir Hazar Khan fired as a result his father was killed, while M. Ibrahim received severe injuries; that accused Shah Nawaz S/o Meo Khan and Shahzad S/o Naroo Khan were

available in a car who helped the accused and accused Saleem S/o Laiq informed about the release of his father from jail.

3. I have heard learned counsel for the applicants and learned A.P.G. and perused the record.

4. Learned counsel for applicants/accused Muhammad Saleem and Shah Nawaz has argued that applicants/accused are innocent and have falsely been implicated in this case by complainant due to previous enmity. He has further argued that the father of applicant/accused M. Saleem was murdered by Sahib Khan Mitho, Ali Akbar and Nawab over which FIR No:152/2012 was lodged by paternal uncle of applicant/accused M. Saleem and such case is pending in the court of VIIIth: Addl. Sessions Judge Hyderabad, in which accused Nawab is absconder, while accused Mitho is behind the bar and accused Ali Akbar and Sahib Khan are on bail. He has further argued that paternal uncle of applicant/accused M. Saleem also lodged another FIR No.185/2017 u/s 506-B/34 PPC and 25 Telegraph Act against Sahib Khan, Ali Akbar and Nawab at PS NKIA, while he has also got registered another FIR No.171/2012 against Sahib Khan and others at PS Naushehro Feroz and the present FIR is counterblast of above FIRs. He has further argued that Aijaz and Sahib Khan are also nominated in FIR 37/2016. He has further argued that deceased Sahib Khan was criminal mind person, who had enmity with different people due to which he was nominated in many cases of ATC, which are pending, therefore possibility of his murder by some other persons cannot be ruled out. He has further argued that paternal uncle of applicant/accused M. Saleem filed CP

No:D-3117/2012 before Hon'ble High Court of Sindh against illegal acts of complainant and others and the present FIR is counterblast of FIRs and C.P. filed against complainant's party. He has further argued that the applicants/accused are police constables and posted at Central Jail and due to enmity with the complainant party they have been booked in this false case. He has further argued that all the witnesses in the present case are interested and relative of complainant and no any independent person has been cited as witness or mashir. He has further argued that no any specific role has been attributed against the present applicants/accused and even they have no concern with the alleged incident, but they have been booked in this case by the complainant due to previous enmity, therefore in order to damage the reputation of the applicants/accused the complainant has malafidely involved them in this false case and such their case at this stage requires further inquiry. He has further argued that the applicants/accused have already joined the investigation, therefore they have not misused the concession of interim bail granted to them and as such they are entitled for confirmation of bail. He has relied upon 2013 MLD 833, 2013 YLR 164, 2012 PCrLJ 617, 2017 MLD 1204 and 2018 PCrLJ 1347.

5. The learned advocate for applicant/accused Mir Hazar Khan has argued that the applicant/accused is innocent and has falsely been implicated in this case by the complainant due to previous enmity. He has further argued that on 31.08.2017 the applicant/accused was in police custody at PS Jamshoro as he was

arrested U/s 54 Cr.P.C. and released on:1.9.2017 on personal surety of Mr. Ghulam Sarwar S/o M. Siddique. He has further argued that prior to this the deceased Sahib Khan got registered fake FIR No.46/2017 U/s 365/511/337-A/34 PPC against the applicant/accused, while paternal uncle of co-accused M. Saleem got registered FIR No:152/2012 against Sahib Khan, Mitho, Ali Akbar and Nawab and such case is pending in the court of VIIIth: Addl. Sessions Judge Hyderabad. He has further argued that paternal of accused uncle M. Saleem got registered FIR No:185/2017 and 171/2012 against the complainant party, therefore the present FIR is counterblast of such FIRs and one CP No:D-3117/2012 filed in the Hon'ble High Court of Sindh. He has further argued that the alleged offence has not been committed by the applicant/accused and all the witnesses in this case are interested and inimical with the applicant/accused therefore the case of the applicant/accused at this stage requires further inquiry and interim bail before arrest granted to the applicant/accused is liable to be confirmed.

6. Learned A.P.G contends that applicants are involved in heinous offence of murder which falls under the prohibitory clause of section 497 Cr.P.C hence not entitled for confirmation of bail; names of present applicants/accused are appearing in FIR with their specific roles; that the applicant/accused Mir Hazar Khan was armed with pistol who had committed the murder of father of complainant namely Sahib Khan and the applicant/accused Muhammad Saleem and Shah Nawaz accompanied him; M. Ibrahim was accompanied with deceased Sahib Khan and he also received fire arm injuries and

in his statement U/s 164 Cr.P.C. implicated all the applicants/accused as the applicants/accused Muhammad Saleem and Shah Nawaz facilitated applicant/accused Mir Hazar Khan in committing the murder and causing injuries to him; that eyewitness Muneer Ahmed has fully supported the version of prosecution which finds support from medical evidence with postmortem of deceased and MLC of injured; that applicants/ accused have failed to establish malafide intention on the part of complainant for their false involvement in this case; that there is sufficient material with prosecution to connect the applicants/accused with the commission of offence as such the applicants/ accused are not entitled for confirmation or bail.

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10. With regard to plea of alibi of applicant Mir Hazar Khan at the time of incident was in Jamshoro lockup as frivolous. Suffice to say that incident time is confinement for a short period and thereafter release without any charge, shoes that can be managed. However this aspect cannot be examined at this stage hence trial court would be competent to thrash out.

11. Allegation against accused Shahnawaz is merely presence in car without any role hence his bail application was confirmed by short order.

12. These are the reasons for short order dated 14.11.2018 whereby bail applications of applicants/accused Muhammad Saleem and Mir Hazar Khan were rejected and bail granted to applicant/accused Shahnawaz was confirmed on same terms and conditions.

Relevant portion of the order dated 23.11.2017 of lower court.

“From its perusal it appears that the complainant has got registered FIR of this incident regarding commission of murder of his father Sahib Khan and injuries to PW- M. Ibrahim by the applicant/accused Mir Hazar Khan with firearm weapon with the help of applicants/accused M. Saleem and Shah Nawaz, who facilitated the applicant/accused Mir Hazar Khan in commission of this offence. The versions of complainant have been supported by his witnesses in their statements recorded U/s 161 Cr.P.C. The injured M. Ibrahim was also produced before XIXth Judicial Magistrate Karachi East, where his statement U/s 164 Cr.P.C. was recorded in which he fully implicated the applicants/accused with the commission of this offence. The perusal of police papers reveals that both the eye witnesses M. Ibrahim and Muneer Ahmed have fully supported the prosecution case and even postmortem of deceased Sahib Khan and MLC of injured M. Ibrahim also support the versions of complainant that both the deceased and injured had received firearm injuries due to which .deceased Sahib Khan died and M. Ibrahim received injuries. According to the prosecution case the applicants/accused M. Saleem and Shah Nawaz facilitated the applicant/accused Mir Hazar Khan in committing the murder and causing injury to injured therefore provision of section 34 PPC are very much attracted with the facts and circumstances of the case against applicants/accused M. Saleem and Shah Nawaz. The perusal of record reveals that there is admitted previous enmity between the parties, therefore there is also a motive of committing murder of deceased and causing injury to injured and as such the applicants/accused have failed to establish

the malafide intention on the part of complainant for involving them in this case falsely. It is also a settled principle of law that grant of pre-arrest bail is extraordinary remedy provided in exceptional circumstances on showing malafide on the part of prosecution or complainant and apprehension of arrest for the purpose of humiliation, but in the present case the applicants/ accused had not shown any malafide on the part of complainant to implicate them in this case falsely, therefore no any exceptional circumstances have been shown by the applicants/accused for grant of pre-arrest bail to them. Furthermore the applicants/ accused are involved in heinous crime of commission of murder and causing injury to injured which falls under the prohibitory clause of section 497 Cr.P.C. therefore on the basis of material available on record it appears that the applicants/accused are involved in commission of this offence. The case laws quoted by the learned counsel for applicant/accused Mir Hazar Khan are distinguishable from the facts and circumstances of the instant case, while I am fully agreed with the case laws quoted by learned advocate for complainant.

Under the above discussed reasons, I am of the humble view that the applicants/accused are not entitled for confirmation of interim bail granted to them, which is hereby rejected and interim pre-arrest bail granted to them is hereby recalled. The observation made herein above are of tentative nature and will not affect the merits or demerits of the case.”