

IN THE HIGH COURT OF SINDH AT KARACHI**Cr. Bail Application No. 1406 of 2018**

Applicants : 1. Kashif;
2. Pervez;
3. Sagheer;
through Mr. Maroof Hussain Hashmi, Advocate

Versus

Respondent : The State
Through Mr. Zahoor Shah, DPG

Date of order : 22.11.2018

ORDER

Omar Sial, J The applicants Kashif, Pervez and Sagheer have sought pre-arrest bail in crime No. 214/2013 registered under Sections 302/324/109/34 PPC at Paposh Nagar police station in Karachi.

2. Brief facts of the prosecution case are that one Naseer Taj on 15.10.2013 reported the occurrence of a cognizable offence which had taken place on the previous date i.e. 14.10.2013. He reported that he along with some other people was going to purchase animal for Eid-ul-Azha when they were stopped. He saw his uncle Haji Maroof and his sons namely Yasir, Aamir, Tanveer, Chen Zeb, Asif, Khurram, Pervez (applicant), Sagheer (applicant), Kashif (applicant) and Saleem appeared on the spot. Upon the instigation of his uncle Haji Maroof, accused Tanveer, Aamir and Yasir fired upon the complainant party. As a consequence of which, 3 members of complainant party namely Mehtab, Aareeb and Aizaz Taj were killed and some other were also injured. Accordingly, afore-mentioned FIR was registered.

3. I have heard the learned counsel for the applicants as well as the learned D.P.G. and also gone through the record with their able assistance. My observations are as follows:

- (a) The applicants are assigned the role of being present on the spot when the quarrel seems to have broken out. He was not said to have been armed. Firing and the subsequent injuries and casualties caused have been assigned to accused Tanveer, Aamir and Yasir. Whether the incident did actually happen as claimed by the prosecution and whether the

applicants shared a common intention with those who fired will have to be determined at trial.

- (b) It appears from the record that the applicants remained absconders for some time. The learned counsel for the applicants has submitted that the two applicants are residents of Mansera and as they had been falsely nominated in this case they were not aware of the proceedings. In order to establish the bonafide of the applicants, the learned counsel has submitted that as soon as they became aware of the case, they surrendered themselves before the learned trial court. It is true that an absconder would lose some of his rights, however, abscondence cannot be made the sole ground for refusal of bail specially when the applicants have themselves appeared and surrendered.
- (c) There appears to be a family enmity between the complainant party and the accused party and the incident prima facie seems to be a consequence of that enmity. In such an eventuality throwing the net wide by the complainant cannot be conclusively ruled out at this initial stage.
- (d) Co-accused Haji Maroof alleged to have instigated the remaining accused has been granted bail whereas co-accused Mohammad Asif has been granted bail by the Hon'ble Supreme Court of Pakistan vide its order dated 28-11-2017. Co-accused Chan Zeb and Muhammad Khurram were also granted pre-arrest bail by this court vide order dated 19.6.2018. The applicants have a similar role as Mohammad Asif's and hence are entitled to the same concession.
- (e) The case of the applicants falls within the ambit of section 497(2) Cr.P.C. and thus one of further inquiry.

4. In view of the above, applicants are admitted to post arrest bail subject to their furnishing solvent sureties in the amounts of Rs.100,000/- each and P.R. bonds in the like amount to the satisfaction of the Nazir of this court.

JUDGE

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 1013 of 2016

Applicants : 1. Muhammad Khurram;
2. Chen Zeb;
through Mr. Maroof Hussain Hashmi, Advocate

Versus

Respondent : The State
Through Mr. Zahoor Shah, DPG

ORDER

Omar Sial, J The applicants Mohammad Khurram and Chen Zeb have sought pre-arrest bail in crime No. 214/2013 registered under Sections 302/324/109/34 PPC at Paposh Nagar police station in Karachi. Earlier, their pre-arrest bail application was turned down by the learned Additional Sessions Judge-III, Karachi (Central) vide his order dated 14.07.2016.

2. Brief facts of the prosecution case are that one Naseer Taj on 15.10.2013 reported the occurrence of a cognizable offence which had taken place on the previous date i.e. 14.10.2013. He reported that he along with some other people was going to purchase animal for Eid-ul-Azha when they were stopped. He saw his uncle Haji Maroof and his sons namely Pervaiz, Yasir, Aamir, Tanveer, Chen Zeb (applicant), Asif, Khurram (applicant), Saghir, Kashif and Saleem appeared on the spot. Upon the instigation of his uncle Haji Maroof, accused Tanveer, Aamir and Yasir fired upon the complainant party. As a consequence of which, 3 members of complainant party namely Mehtab, Areeb and Aizaz Taj were killed and some other were also injured. Accordingly, aforementioned FIR was registered.

3. I have heard the learned counsel for the applicants as well as the learned D.P.G. and also gone through the record with their able assistance. My observations are as follows:

- (a) Both appellants are assigned the role of being present on the spot when the quarrel seems to have broken out. He was not said to have been armed. Firing and the subsequent injuries and casualties caused have been assigned to accused Tanveer, Aamir and Yasir. Whether the incident did actually happen as claimed by the prosecution and whether the applicants shared a common intention with those who fired will have to be determined at trial.
- (b) It appears from the record that the applicants remained absconders for some time. The learned counsel for the applicants has submitted that the two applicants are residents of Mansera and as they had been falsely nominated in this case they were not aware of the proceedings. In order to establish the bonafide of the applicants, the learned counsel has submitted that as soon as they became aware of the case, they surrendered themselves before the learned trial court. It is true that an absconder would lose some of his rights, however, abscondence cannot be made the sole ground for refusal of bail specially when the applicants have themselves appeared and surrendered.
- (c) There appears to be a family enmity between the complainant party and the accused party and the incident prima facie seems to be a consequence of that enmity. In such an eventuality throwing the net wide by the complainant cannot be conclusively ruled out at this initial stage.
- (d) Co-accused Haji Maroof alleged to have instigated the remaining accused has been granted bail whereas co-accused Mohammad Asif has been granted bail by the Hon'ble Supreme Court of Pakistan vide its order dated 28-11-2017. The applicants have a similar role as Mohammad Asif's and hence are entitled to the same concession.
- (e) The case of the applicants falls within the ambit of section 497(2) Cr.P.C. and thus one of further inquiry.

4. Above are the reasons for my short order dated 14.05.2018 in terms of which the interim pre-arrest bail granted to the applicants on 20.07.2016 was confirmed on the same terms and conditions.

JUDGE