

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Bail Application No. D- 78 of 2023
(*Ashique Ali Lanjar v. The State*)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Mr. Ubedullah Malano, Advocate for the applicant.
Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

Date of Hearing & Order: **24-10-2023**

ORDER

MUHAMMAD IQBAL KALHORO, J:- On account of previous enmity between the parties over the turn of irrigation water, allegedly on 23.09.2018 at about 0730 hours, when complainant party consisting of at least six persons set off for village Jumo Norio, and reached a link road near said village, they were way laid by the applicant and 17 other accused, named in the FIR, armed with different deadly weapons. Applicant is said to be armed with a G3 rifle. Applicant and other accused allegedly then fired on the complainant party killing three persons, namely, Ghous Bux, Gul Baig and Ashique and critically injuring two PWs Ali Murad and Gul Sher. Applicant is alleged to have fired on injured Ali Murad, who as per medical evidence, sustained two injuries, one on knee and the other on his pelvic region. The incident was reported to police on 24.09.2018 at about 1835 hours after the injured and dead were taken to hospital for postmortem and treatment.

2. Learned counsel in defence has argued that the applicant is resident of Ghotki, was not aware about the pendency of the case; he has been falsely implicated in this case; co-accused Zafarullah Lanjar

having been assigned similar role has been granted bail and his bail order has not been challenged, therefore, rule of consistency is applicable. He has relied upon the case-law reported as *Muhammad Nadim v. The State* (**2023 SCMR 184**), *Mian Abdul Manan v. The State* (**2005 PCrLJ 89**) *Muhammad Ilyas v. The State* (**2010 PCrLJ 379**) and *Muhammad Alam v. The State* (**2017 YLR Note 151**).

3. On the other hand, learned Additional P.G has opposed grant of bail to the applicant stating that the applicant has remained absconder for more than five years; the incident took place in the year 2018 and he was arrested on 15.07.2023 from a hotel in Karachi when he was trying to leave Pakistan for Saudi Arabia.

4. We have considered submissions of parties and taken guidance from the case-law cited in defence. Applicant's name is specifically mentioned in FIR with a direct role of firing on PW Ali Murad. Besides him, co-accused Ghulam Shabir is also said to have fired upon PW Ali Murad. Two accused have been saddled with firing on PW Ali Murad and the medical report of the said injured shows that that he had received two injuries which is in consonance with the allegation against the applicant and said co-accused.

5. . Besides, applicant's presence armed with a deadly weapon and firing indiscriminately on the complainant party conjointly with other accused is a *prima facie* sufficient evidence of his sharing common intention with the remaining accused to commit the alleged offence. The fact that applicant remained absconder for more than five years is an additional circumstance going against him, which at this stage, while deciding bail application requiring only tentative assessment, cannot be ignored. In the incident, three persons lost their lives and two were

critically injured. Applicant's specific role and his absconsion for more than five years point out, prima facie, to his involvement in the offence.

6. Insofar as, rule of consistency on the ground that co-accused Zafarullah has been granted bail is concerned, we have perused the order and are of the view that to the case of present applicant, the said rule is not applicable, as co-accused Zafarullah has been granted bail in consideration of apparent conflict in medical evidence and oral account and in addition, his case was remanded by this Court in Appeal with observation that those accused who were on bail shall remain on bail. Since co-accused Zafarullah was on bail, in consideration of observation of this Court plus conflicting evidence qua his role, he was granted bail. The case-laws, relied upon by learned counsel for the applicant are distinguishable and not applicable in this case.

7. In view of the above, we are of the view that no case for bail is made out in favour of the applicant. Accordingly, this bail application is **dismissed**. It is informed that applicant since has been recently arrested, amended charge has been framed and the case is poised for commencement. Therefore, the trial Court is directed to examine material witnesses within a period of three months and thereafter the applicant would be entitled to file bail application for same relief for fresh consideration.

JUDGE

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