

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.D-98 of 2023
(*Allah Wadhayo Jagirani v. The State*)

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Present:-

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

M/s Khan Muhammad Sangi and Sikandar Sadar Siddiqui, Advocates for applicant in both matters.

Syed Sardar Ali Shah, Additional P.G for the State.

Date of Hearing & Order: **13-12-2023**

ORDER

MUHAMMAD IQBAL KALHORO, J:- As per FIR, complainant travelling along with other PWs and deceased brother Mehran and Saeed Ahmed in two cars towards Sangi Sukkur was waylaid by at least 15-dacoits on 19.06.2023 at about 11:30 p.m, on service road motorway CPEC Picket-115 Bqiro Wah. Out of 15 dacoits, 10 were identified by them including applicant armed with a K.K. When dacoits tried to commit robbery from complainant party, they resisted, as a result, accused Gulabi and Meerali Jagirani made direct fires on Mehran and Saeed Ahmed killing them at the spot. Yet, they committed robbery of certain articles from the complainant party and left the scene only after abducting PW Jalaluddin for ransom. FIR was registered on 21.06.2023, when complainant's effort to get back custody of Jalaluddin from the dacoits through Nekmards of the area proved futile.

2. Learned counsel for applicant submits that a day before the incident, cousin of applicant was killed in an encounter by the police, against which they had protested, hence applicant has been falsely implicated in this case; there is delay of two days in registration of FIR; no overact has been assigned to the applicant. Hence, the case against applicant requires further enquiry. He has relied upon the cases reported as *Zeeshan and 5 others v. The State* (**2022 YLR 2046**) and *Muhammad Ibrahim v. The State* (**2012 YLR 1391**).

3. His arguments have been controverted by learned Additional P.G citing presence of the applicant at the spot and relying upon case of *Asghar alias Ghoro v. The State* (**2013 PCrLJ 1203**).

4. We have considered submissions of parties and perused material available on record. *Prima facie*, delay in FIR has been explained by the complainant stating that after murder of two persons by the accused party, he initially got busy in their postmortem, burial rituals and efforts to get back custody of abductee through Nekmards of the area. But when his efforts bore no fruit, he registered the FIR. Further, this is a case of abduction as well as robbery, besides murder. In such cases, committed with a common object, individual role of a member of an unlawful assembly at the time of incident is irrelevant. Every member of an unlawful assembly is equally guilty of the offence he has participated in irrespective of the fact whether or not he has committed an overt act in it. It is only in injury or murder case, exclusive role of each individual is weighed in the backdrop of story and decided tentatively even at bail stage. However, in the cases, as the one in hand, when name of an accused appears in FIR identifying him as a member of unlawful assembly committing the offence with a common object, ground of lack of specific role would not be available to him for the purpose of bail.

5. Learned Additional P.G has informed that after arrest of applicant, one K.K rifle with which he was identified to be armed at the time of incident has also been recovered from him. Further, the case has been challaned and charge has been framed against the applicant. All the remaining accused are absconders. The ground of murder of cousin of the applicant at the hands of police does not seem to be attracted either, as even an application for registration of FIR against the police officials by the family of cousin of the applicant was filed on 23.06.2023 after registration of present FIR. On top of it, learned counsel for applicant has not been able to explain as to why applicant from amongst entire family of deceased cousin has been picked up by the police for implicating in this case. In any case, there is *prima facie* sufficient evidence connecting the applicant with the alleged offence in which two persons have lost their lives, other persons with them were robbed and one person among them was abducted for ransom.

6. Accordingly, both bail applications are **dismissed**. However, 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 before the trial Court for same relief for a fresh consideration independent of previous orders including this one. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

These bail applications are **disposed of** accordingly. *Office to place a signed copy of this order in captioned connected matter.*

JUDGE

JUDGE

Ahmad