

Cr.B.A. No.S-476 of 2006

1. For orders on MA-1911/2006
2. For hearing.

Present:

Mr.Justice Dr.Rana Muhammad Shamim &
Mr.Justice Ghulam Dastagir A. Shahani

30.1.2008.

Mr.Abdul Mujeeb Pirzada for the applicant.

Mr.Habib-ur-Rahman Shaikh, Assistant Advocate General for
the State.

O R D E R

DR. RANA MUHAMMAD SHAMIM, J. Through this bail application, the order of trial court dated 15.8.2006 is assailed whereby the bail application of the applicant was dismissed on the ground that the applicant was nominated in the F.I.R and he remained absconding for a considerable time of six years. Since he was found fugitive from law, he was not found entitled for any concession.

2. The brief facts of the prosecution case are that the complainant party and the accused party were on inimical terms on the dispute of karap. On 5.9.2001 at morning time complainant Abdul Hakeem, his nephews Muhammad Soomar, Dhani Bux and complainant's son Haji Gharibo were grazing their cattle in Shahpur Bello when at about 2-30 p.m. Abdul Ghafoor, Abdul Rauf, Imamuddin armed with Kalashnikovs, Shaman with rifle, Sharafdin, Nemat Ali, Qalandro and Mumtaz with hatchets, Wali Muhammad, applicant Ghous Ali, Wahid Bux, Mato alias Sibghatullah and Qamaruddin with lathies came there. Accused Abdul Ghafoor fired from Kalashnikovs upon Muhammad Soomar who fell down and died. The accused with lathies inflicted injuries to Haji Gharibo. On the cries Abdul Haque and Abdul Latif came

running who also identified the culprits. The culprits then took away 15/20 buffaloes of the complainant with them.

3. Mr. Abdul Mujeeb Pirzada, learned counsel for the applicant submits that the applicant is 72 years old and as such he is an infirm person; the F.I.R was lodged after the delay of one day without any explanation. The incident was of daytime i.e. lot of time to lodge F.I.R willfully was consumed in order to consult and falsely implicate the persons including the applicant. Admittedly there is enmity between two families i.e. the complainant and the applicant. The allegations against the applicant are vague, ill-founded and general in nature. There is only allegation against the applicant that he caused lathi injury to one injured Gharibo and there is no allegation to cause any injury to the deceased Muhammad Soomar. There was only one bullet injury caused to the deceased Muhammad Soomar that was allegedly caused by direct firing of accused Abdul Ghafoor. He further submits that re-investigation of the case was conducted in which the applicant was shown as innocent vide re-investigation report dated 21.6.2006 submitted by the Additional Inspector General of Police, Sindh Karachi, that report produced by the learned counsel for the applicant is kept on record and same is available with the learned Assistant Advocate General. He further submits that the applicant is in prison since 27.4.2006 without trial. He further submits that mere absconsion or fugitive from law does not disentitle the applicant for the grant of bail and on the basis of two investigation reports, the case of the applicant itself becomes a case of further enquiry. He relied upon the cases: State versus Malik Mukhtiar Ahmed Awan (1991 SCMR 322), Muhammad Sadiq and others versus the State (1990 SCMR 1654), Attaullah and three others versus

the State (1999 SCMR 320), Faraz Akram v. State (1996 SCMR 1360) and Ghulam Abbas alias Abbasi, others versus State (PLD 2005 Karachi 255) and Muhammad Ramzan versus Zafrullah and others (1986 SCMR 380).

4. Learned Assistant Advocate General concedes for the grant of bail on the ground that the applicant is a 72 years of age and being infirm person attracts first proviso to subsection (1) of Section 497 Cr.P.C, which entitles him for the grant of bail. He further submits that in view of two investigation reports; one of which has declared the applicant innocent, which makes the case of the applicant of further enquiry.

5. We have heard the learned counsel for the applicant, learned Assistant Advocate General for the State, perused the material available before us and gone through the case law.

6. In case of Malik Mukhtiar (Supra), the Hon'ble apex court was pleased to hold that the rule is not absolute that the fugitive from law should not be enlarged on bail. In case of Attaullah versus the State (Supra), it was held by the Hon'ble apex court that when the applicant was not alleged to have caused any injury to the deceased and in such circumstances, the applicant becomes entitled for the grant of bail. In case of Muhammad Sadiq versus State (Supra), the Hon'ble apex court was pleased to grant bail on the ground that the applicant though present at the time of incident have not caused any injury to the deceased though they were armed with pistol and rifle. In case of Ghulam Abbas alias Abbasi (Supra), a D.B. of this court was pleased to hold that delay in prosecution of the case was acknowledged as the statutory right by Legislature, but for the best-known wisdom same had been withdrawn. However, it

has always been considered by the superior courts that even when the provision regarding delay was not available on statutory book and even some cases where such restriction was imposed, court conceded bail on the ground of undue delay if inordinate delay is not explained or delay is not on the part of the applicant, it amounts to shocking and scandalous and the bail was granted to the accused.

7. In the instant case the applicant is behind the bars for last 22 months without any justification and without trial, which amounts to punishment before judgment. There are no legal and moral bar to keep the applicant in prison for indefinite period. Farther the old age of the applicant comes within the definition of infirm person, which entitles him to the grant of bail. The law makers amended section 497, Cr.P.C. in the year 1923 with a legal wisdom that an infirm person, person of a tender age and a woman may be granted bail even they are involved in a heinous crime.

8. As discussed above, we are of the view that the case of the applicant is of further enquiry. He is entitled to the concession of bail under sub clause (2) of Section 497 Cr.P.C. as well as being infirm person under first proviso to subsection (1) of Section 497, Cr.P.C. The bail to the applicant is granted subject to furnishing a solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the Additional Registrar of this Bench.

JUDGE

JUDGE

N.M.