

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.D-55 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection
For hearing of main case

Present:-

Mr. Justice Mahmood A. Khan.

Mr. Justice Zulfiqar Ali Sangi.

Date of hearing : 04.10.2023.

Date of decision: 12.10.2023.

Mr. Ishrat Ali Lohar advocate for the applicants.
Mr. Shewak Rathore, D.P.G for the State

ORDER.

ZULFIQAR ALI SANGI, J:- Through instant bail application, applicants Muhammad Riaz, Muhammad Yaseen, Tajamul Hussain and Muzammil Hussain seek post arrest bail in FIR culminated from Crime No.19 of 2023, registered at PS Mangli, District Sanghar for offences under sections 302, 324, 353, 109,337-A(i),F(i), 147, 148, 149, PPC read with Section 6/7 ATA, 1997. After their bail was declined by learned Judge, Anti Terrorism Court, Shaheed Benazirabad vide order dated 10th June, 2023.

2. Facts of the prosecution case are that complainant Inspector Jabir Hussain Lahori lodged FIR being SHO at police station Mangli stating therein that on the direction of 2nd Additional Sessions Judge, Sanghar (vide order No.220/2023 dated 03.02.2023) and order of Mukhtiarkar Sanghar (No.SC/123/2023 dated 13.02.2023) for handing over the temporary possession of property to one applicant Salahuddin Pathan, he alongwith his staff, Mukhtiarkar Sanghar, Tapedar and applicant Salahuddin Pathan proceeded towards the pointed place vide roznamacha entry No.14 dated 17.02.2023 at 1500 hours. At about 1600 hours they reached at the pointed place, the applicant Salahuddin Pathan shown the occupied property to Mukhtiarkar and police party. The Mukhtiarkar called the accused Muhammad Riaz Rajput and asked him to vacate the said property. The accused

Muhammad Riaz disclosed that he is answering them after consulting with his family members. The accused Muhammad Riaz went into the house and returned back at 1815 hours having stick (lathi) in his hand. The other accused namely Muhammad Irfan with gun, Muhammad Rehman with gun, Muhammad Yaseen with hatchet, Tajmal Hussain with hatchet, Muzamil Hussain with stick (lathi) and two unknown accused were also accompanied with him. The accused Muhammad Riaz disclosed that one Amir Altaf has directed them not to spare the land and not to leave the police party. On the instigation of Amir Altaf, accused Muhammad Irfan made fire from his gun upon police party with intention to commit murder to them which fire hit to WHC Ali Muhammad on his abdomen and legs, accused Muhammad Rehman also made fire from his gun upon police party with intention to commit their murder and said fire hit to PC Rustam Ali at thigh of his right leg, accused Muhammad Yaseen inflicted the backside of hatchet blow to PC Zakir which hit him on his left hand, accused Tajmal Hussain inflicted lathi blow to ASI Muhammad Yousif Pathan which hit him on his leg over the knee and the remaining accused also overt acted and pushed the police party. The police party also made firing in their defence. After firing the accused ran away towards their houses alongwith their weapons. The injured were sent to civil hospital Sanghar for treatment and for medico legal certificates through PC Saqib Ali. The police party encircled the houses of accused and arrested accused Muhammad Irfan with DBBL gun, Muhammad Riaz, Muhammad Rehman, Muhammad Yaseen, Tajmal Hussain and Muzamil Hussain. From personal search of accused Muhammad Irfan two live cartridges of 12 bore white colour recovered. The other arrested accused disclosed their names as Muhammad Riaz, Muhammad Rehman, Muhammad Yaseen, Tajmal Hussain and Muzamil Hussain and from their personal search nothing was recovered. The recovered property viz; DBBL gun and cartridges were sealed on the spot. From the place of incident six empty cartridges of 12 bore of white colour and two empties of SMG fired by the police side recovered, which were sealed on spot. The police party returned back to the police station alongwith accused and property and lodged instant FIR. **During the course of investigation, injured WHC Ali Muhammad expired in the hospital, hence the section 302 PPC**

was added in the FIR. After completing usual investigation the charge-sheet was submitted before the court of law.

3. Learned counsel for the applicants contended that applicants being innocent have been falsely implicated in this case due to enmity with one Salahuddin Pathan; that there is dispute over the piece of land between the parties; that applicants had preferred revision application No.69/2022 Re: Amir Altaf versus Salahuddin & others which was allowed and the case was remanded to the learned trial court for re-writing of judgment; that learned trial court passed order dated 02.02.2023 as an interim relief, such order and its implementation was contradictory to the directions of this Court; that the Mukhtiarkar Sanghar and the police party malafidely supported the applicant Salahuddin; that the alleged incident does not fall within the ambit of terrorism and the sections 6/7 of Anti-Terrorism Act-1997 have been misapplied; that applicants are poor persons and they have been involved in this case falsely; that there is no any specific role has been assigned to the applicants and there is no any cogent material is available with the prosecution to connect them with the alleged offence. In view of above circumstances, case of applicants require further inquiry, hence they may be released on bail. In support of his contentions, he relied upon the cases of Munir Ahmad v. The State (2014 SCMR 1669) Jahanzeb and others v. The State (2021 SCMR 63), Jehangir v. The State (2012 YLR 2942), Sheraz v. The State (2021 MLD292).

4. Conversely, learned DPG for the State has vehemently opposed the grant of bail on the grounds that applicants are nominated in the FIR with specific roles played by them in the commission of offence; that PWs have fully implicated the applicants in their statements recorded under section 161 Cr.P.C and the recovery of weapons has been made from the possession of applicants; that empty bullets and cartridges have also been recovered from the place of incident; that police officers/officials during performing their duties received injuries and later on during treatment WHC Ali Muhammad expired in the hospital; that the oral version of P.Ws is supporting by the medical version. He next contended that the accused party attacked upon the police party and revenue officers/officials when they were busy in

discharging their duties on the directions of the court, therefore, they are not entitled for grant of bail. Lastly, he prayed for dismissal of this bail application.

5. We have heard the learned counsel for the parties and have gone through the material available on record with their able assistance.

6. Admittedly, applicants are nominated in the FIR with their specific roles for causing straight fires upon the police party, in which, police officials received injuries and one WHC Ali Muhammad lost his life during performing his duties. The applicants attacked upon the police party as well as revenue officials, who on the directions of the Court went at the place of incident. The P.Ws have fully supported the case of prosecution in their statement recorded under section 161 Cr.P.C. The FIR was lodged promptly which exclude the impression at it might was registered after deliberation and consultation. It is a fact that the police party along with revenue officers/officials reached at the place of incident on the directions of learned 2nd Additional Sessions Judge, Sanghar for vacating the property in dispute and to hand over the same to Salahuddin Pathan. Per FIR, accused Muhammad Riaz Rajput asked the police party and revenue officers that after consultation with his house inmates he will return back the property, he went to the house and returned along with co-accused duly armed with deadly weapons and attacked upon the police party and revenue officers with intention to commit their murder, resultantly WHC Ali Muhammad, PC Rustam Ali, PC Zakir and ASI Muhammad Yousif received injuries and during the treatment WHC Ali Muhammad died in the hospital, such act of the applicants was not sudden but reflects that after consultation with each other by sharing their common intention committed the offence punishable with death or imprisonment of life.

7. As far as the plea taken by learned counsel for applicants that instant case does not come under the ambit of terrorism. Suffice to say, the law is very much clear that the legislature has elucidated their intention by inserting section 6(2)(m) and (n) of Anti-Terrorism Act-1997, it is mentioned that the involvement of accused in serious coercion or intimidation of a public servant in order to refrain from

discharging their lawful duties and serious violence against a member of police force, falls under the jurisdiction of Anti-Terrorism Court.

8. From the record, it appears that in this case the applicants/accused after consulting with each other intentionally and deliberately in furtherance of their common object by using criminal force upon police party as well as Mukhtiarkar Sanghar being public servant and prevent them from discharging their lawful duties by attacking upon them made straight fires with deadly weapons with intention to commit their murder, result thereof the police personals sustained injures and later on one police official lost his life, which prima facie creates sense of fear and insecurity to the society, such act of applicants/accused party clearly falls under ambit of section 6(2)(m)(n) of Anti-Terrorism Act-1997. In our view, the plea taken by the learned counsel for applicants/ accused has no force. Furthermore, during the course of investigation the empty cartridges and bullets have been recovered from the place of incident and the crime weapons have also been recovered from the possession of the applicants party, which also connect them with the commission of offence. Moreover, the medical version is in support of oral version as the injured WHC Ali Muhammad expired in the hospital during treatment. It is observed that on account of death caused, the role of the accused charged for attributing general firing and not having specific role cannot be assessed and concluded for grant of bail which isn't to be looked in isolation as a single factor; favourable to him. The Court has to see as to whether the link of a case at its initial stage lead to a situation that prima facie without the accused, the chain is not found which in substance defies all the factual elements as present on record. Looking into the facts and the circumstances of the case in hand accused persons had killed one police official and injured the others in a barbarous manner by acting like feral animals.

9. In view of above detailed reasons and circumstances, we are of the tentative view that prima facie there are reasonable grounds to believe that the applicants are involved in the commission of offence, as they have failed to make out a case for bail at this stage. Accordingly, this bail application is **dismissed**.

10. Needless to mention here that the observations made hereinabove are tentative in nature and will not prejudice the case of either party at the time of trial.

JUDGE

JUDGE