

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-119 of 2024

(Saifullah & another Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 13.08.2024

Mr. Afzal Karim, Advocate for the applicant

Mr. Ghazi Salahuddin, Advocate a/w complainant

Mr. Shahzado Saleem, A.P.G Sindh a/w I.O/SIP M. Hassan of P.S Digri

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ORDER

Adnan-ul-Karim Memon, J. The applicants Saifullah and Dildar Ali seek their release on post-arrest bail in F.I.R No.131 of 2023 for the offense under sections 302, 324, 506(2), 114, 148, 149, 337-A(i), 337-F(i), 504 PPC at Police Station Digri. Their earlier bail plea was declined by the trial court vide order dated 29.05.2024 on the premise that the applicants/accused being members of an unlawful assembly and in the prosecution of their common object caused injuries to the deceased with hard blunt objects, resulting in the injured succumbed to the injuries and died.

2. The accusation against the applicant is that on 16.2.2023 the applicants along with their accomplices entered the house of the complainant and assaulted and caused lathi blows to Aijaz Ali who was shifted to Hyderabad Civil Hospital where he succumbed to his injuries and died, such report of the incident was given to police on 22.12.2024.

3. It appears that the applicants/ accused were the member of unlawful assembly and while rioting they entered the house of the complainant party with having hatchet, pistol, and lathis, and the applicants/ accused also caused lathi and butt of pistol blow to Aijaz Ali who later on died during medical treatment therefore at this stage, it cannot be said that the applicants were not present at the time of alleged incident as the offense charged against them carrying capital punishment falls within the ambit of prohibitory clause of section 497 Cr.P.C. when confronted this position of the case, learned counsel for the applicant/accused argued the case against the applicant/accused is false, fabricated, based on malafide, and concocted. Learned counsel mainly argued that the applicants/ accused are innocent and have been falsely implicated in this case with malafide intentions and ulterior motives. He further argued that the FIR is delayed for about six (06) days for which no plausible explanation has been furnished by the complainant which shows that the complainant has designed a false story and has falsely implicated the applicants/ accused. He further argued

that a bare reading of FIR shows that no active or specific role has been attributed to applicants/ accused in the commission of offense except that they caused blows of lathi to deceased Aijaz Ali and prayed that the applicants may be enlarged on post-arrest bail in the subject crime.

4. The aforesaid stance of the applicants has been refuted by the learned Additional Prosecutor General assisted by the learned counsel for the complainant opposed the grant of bail to the applicant on the premise that mainly the applicants/ accused are nominated in FIR with a specific role and the offense punishable under section 302 PPC carrying capital punishment falls within the ambit of prohibitory clause of section 497 CrPC. Finally, they prayed the instant bail application may be dismissed as the applicants/accused have not made out the case for further inquiry.

5. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against the accused, nature, and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Supreme Court rendered in the case of *Shahzad Ahmed Vs. The State* [2010 SCMR 1221]. Keeping in view the above principle, the learned counsel for the parties has been heard and the record has been perused.

6. Perusal of the record reveals that applicants are directly charged in the FIR and the specific role of causing lathi blows upon the deceased has been attributed to the applicants; that names of eye-witnesses have been disclosed in the FIR and eye-witnesses have fully implicated the present applicants in their statements recorded under section 161, Cr. P.C.; that medical evidence also supports the prosecution's version. About the argument of learned counsel for the applicants that the injuries alleged against the applicant were not sufficient to cause the death of the deceased, hence the applicants are entitled to the grant of bail this is hardly a ground to enlarge the applicants on post-arrest bail at this stage for the simple reason that if the contents of FIR are read with the medical evidence in juxtaposition, prima facie shows the presence of both the applicants at the place of the incident. It is also clearly mentioned in the crime report that the deceased died due to severe injuries received by him at the hands of applicants. FIR has also been lodged under section 34 PPC, which provides that if a criminal act is done by several persons in furtherance of the common intention of all, each such person is liable for that act in the same manner as if it were done by him alone. The common intention generally involves the element of common motive and

preparation. It makes no difference that the present applicants had made no firing upon the deceased or not inflicted lathi injuries on him, but what matters is the substance of the charge and offense, therefore, the principle of vicarious liability can be looked into even at bail stage, if from the F.I.R., the accused appears to have acted in preconcert or shared the community of intention with their co-accused who caused fatal injury to deceased and can be saddled by constructive or vicarious liability by invoking section 34, P.P.C. I am of the tentative view that the applicant's involvement at this stage cannot be based on false implication rather a record shows that both in a preplanned manner and preconcert allegedly committed the offense in which one innocent person lost his life, therefore judicial propriety demands that complainant must be examined by the trial court within one month positively to ascertain the truth of the happening.

7. So far as the delay is concerned, the delay in lodging the FIR has been properly explained by the complainant. Even otherwise, delay itself is not sufficient to grant bail in a murder case where one innocent person has lost his life on a petty matter unless the same is supported by other circumstances which factum is missing in the present case. Reliance is placed upon the case reported as Mazhar Iqbal v. The State and others (2010 SCMR 1171), wherein the Honourable Supreme Court has held as under:-

"No doubt, there is delay in lodging the FIR but the complainant has tried to explain such delay. However, the delay by itself is not sufficient to grant of bail unless the same is supported by other circumstances."

8. The upshot of the above discussion leads me to the conclusion that there are reasonable grounds to believe that the applicants have shared the common intention with the co-accused in the commission of the crime of murder; therefore, no case of further inquiry is made. Accordingly, the applicants cannot be released on bail at this stage. This bail application is dismissed, leaving the applicants to move fresh bail applications after recording the statement of the complainant in the aforesaid period, which shall be decided on merits without being influenced by the order of this court which is tentative.

9. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the complainant positively within one month. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

JUDGE