

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-104 of 2024

(Muhammad Hayat & another Vs. The State)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing & Order 13.08.2024

Mr. Jahangir Khan, Advocate for the applicants
Mr. Ghulam Mustafa, Advocate a/w complainant
Mr. Dhani Bux Mari, A.P.G Sindh a/w I.O/SIP Dodo Arisar of P.S Kaloi

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ORDER

Adnan-ul-Karim Memon, J. The applicants Muhammad Inayat & Abdul Aziz through instant application, seek their release on post-arrest bail in F.I.R No.10 of 2024 for the offense under section 302, 324, 337-A(i), 337-F(i), 147, 148, 149, 114, 34 PPC at Police Station Kaloi.

2. Their earlier bail plea was declined by the trial court vide order dated 31.05.2024 on the premise that the applicants/accused being members of an unlawful assembly and in prosecution of their common object, actively participated in a murderous assault carried out upon the complainant party, which resulted into death of complainant's father Muhammad Ramzan due to strangling and multiple injuries to complainant's brother Muhammad Riaz.

3. Learned counsel for the applicants argued that FIR is delayed about 16 hours and even they have not caused any injury to the deceased Muhammad Ramzan; that as per medical report, the deceased died due to heart attack as no injury was found on his body; besides, there is no mark of strangulation as portrayed by the complainant in the F.I.R; therefore, the case against the applicants require further inquiry.

4. On the contrary, learned Additional Prosecutor General assisted by the learned counsel for the complainant opposed the grant of bail to the applicants on the premise that the applicants are nominated in the FIR with specific role of causing injuries to the deceased as well as to the victim; that they are nominated as they shared the common intention to commit murder of deceased and medical report supports the case of the prosecution; that the prosecution witnesses supported the case of the complainant in their 161 Cr.P.C statements; that the offence charged against the applicants carries capital punishment and does not fall within the prohibitory clause of section 497 Cr.P.C. In support of his contentions,

he relied upon case of Ahtesham Ali Vs. The State [2023 SCMR 975] & Ghazan Khan Vs. The State [2021 SCMR 1157] and argued that the applicants actively participated in the occurrence that squarely falls within the ambit of common intention as provided under section 34 PPC as it is not necessary to perform any act, rather common intention presupposes prior concert and requires pre-arranged plan and if several persons have the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them join together and aid or abet each other in the commission of an act, then the one who has not actually done the act with his hands, but helps by his presence or by other act in the commission of the main act, he would be held to have himself done that act within the meaning of section 34 PPC. He prayed for dismissal of the bail application.

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. The accusation against the applicants is that on 07.04.2023, the applicants in connivance with their accomplices caused injuries to the deceased as well as witnesses, such report of the incident was lodged with P.S Kaloi on 08-04-2024. The medical report of injured Riaz Ahmed shows the injury as Shujjah-i-Khafifah, punishable under section 337-A(i) PPC; whereas, post mortem report of deceased Haji Muhammad Ramzan shows no mark of injury and cause of death is still undetermined. So far as the provisional/medicolegal certificate of injured Riaz Ahmed is concerned, the special medical board has opined that the medicolegal certificate is incorrect. If this is the position of the case, coupled with medical evidence, which prima facie show that deceased died not based on the alleged injuries caused at the hands of applicant, as nothing has been shown that the deceased died due to aforesaid injuries. Besides, the medical certificate of injured Riaz Ahmed, which has been declared incorrect. These facts require further inquiry.

7. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to

produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

8. For what has been discussed above in the preceding paragraphs and the facts and circumstances of the instant case make it a case of further inquiry Accordingly, the applicants namely Muhammad Hayat and Abdul Aziz are granted post-arrest bail, in the case arising out of FIR No.10 of 2024 for the offense under section 302, 324, 337-A(i), 337-F(i), 147, 148, 149, 114, 34 PPC at Police Station Kaloi, subject to their furnishing surety in the sum of Rs. 100,000/- (One Hundred Thousand Rupees) each with one more surety in the like amount to the satisfaction of the Trial Court.

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

"Ali Sher"