

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.D-47 of 2023
(*Ghulam Abbas Siyal Vs. The State*)
Crl. Bail Application No.D-51- of 2023
(*Ghulam Shabbir Siyal Vs. The State*)

Date	Order with signature of Judge
------	-------------------------------

Present:

***Justice Ms. Rashida Asad &
Justice Mr. Khadim Hussain Soomro.***

- 1. For Orders on office objection.***
- 2. For hearing of bail application***

Mr. Nazeer Ahmed Junejo, advocate for the applicant in Crl. Bail Application No.D-47 of 2023.

Mr. Parvez Ali Siyal advocate for applicant in Crl. Bail Application No.D-51 of 2023.

Mr. Mansoor Ahmed Shaikh, advocate for complainant.
Mr. Aftab Ahmed Shar, Additional P.G for State

.....

ORDER
23-08-2023

KHADIM HUSSAIN SOOMRO, J By this single order, we intend to dispose of both the captioned bail applications moved on behalf of applicants/accused Ghulam Abbas Siyal and Ghulam Shabbir Siyal in Crime No. 08/2016, offence u/s 302, 324, 114, 337H(2), 148, 149 PPC 7 ATA registered at Police Station Mehboob Kalhoro. Prior to this both the above named applicants filed their post arrest bail applications before the trial Court/Anti Terrorism Court, Khairpur, which were dismissed vide order dated 20-06-2023 and 24-06-2023 respectively, hence they have impugned the said orders by preferring these bail applications.

2. Brief facts of the prosecution case are that complainant Ali Hassan Shaikh lodged the FIR on 07-09-2016 at about 2000 hours, alleging therein that there is a prevailing state of intense hostility among individuals, including him, Javed, Iqbal, and Zulfiqar Shaikh, and legal proceedings are currently being carried on before the courts. Ghulam Murtaza Shaikh also lodged FIR No. 36/2016 offence u/s 337F(v) PPC at Police Station Ghulam Shah Hatri District Larkana against them, in which the complainant party constituted a Medical Board, and on the day of the report, its date was fixed, hence complainant along with his brothers Ghulam Hussain, Laiq, nephews Himath Ali, Ali Raza and Abid Ali were going on their motorcycles towards Larkana. At approximately 7:00 a.m., as they were passing by Unnar Petrol Pump, they noticed a group of individuals on the opposite side of the bypass in Larkana. These individuals were positioned near the shops of Gulab Kalhero. Among them were Javed Ali, who was armed with a Kalashnikov, as well as Abdul Razzak, Ayaz, Ghulam Mustafa, Iqbal, Zulfiqar Ali, and Ghulam Murtaza, who were armed with pistols. Additionally, there were four other individuals with open faces who were carrying Kalashnikovs. The accused persons were clearly visible and could be easily identified if seen again. Notably, Ghulam Mustafa instigated his accomplices for harming the complainant party and even suggested committing murder. Accused Javed Ali made direct fires of Kalashnikov upon Ali Raza, accused Abdul Razzak and accused Ghulam Murtaza Shaikh made straight fires upon Abid, accused Zulfiqar Ali Shaikh and accused Iqbal Siyal made fires upon Himath Ali with pistols. Ayaz Siyal, who was accused, fired shots at Ghulam Hussain. As a result, Ghulam Hussain sustained injuries from the gunfire. The people present at the scene cried out and the injured fell

down. The complainant refrained from approaching the accused due to their fear of weapons. The accused persons, with the intention of spreading fear, engaged in aerial firing prior to fleeing the scene of occurrence. The complainant and his brother, Muhammad Laiq, went to see Ali Raza and saw that he had sustained firearm injuries on the right side of his abdomen and succumbed to the injuries. Himath Ali had also sustained a firearm injury on his forehead and on the left side under the abdomen, resulting in his death. Ghulam Hussain suffered a gunshot wound to his chest, below the abdomen, and he also succumbed to the injuries. Abid Ali suffered two gunshot wounds, one on his left leg knee and another on the palm of his feet. He was in critical condition and was immediately taken to Larkana Hospital for medical treatment. Meanwhile, the deceased bodies were transported to Agra for postmortem examination. After the postmortem and burial ceremony for the deceased, the complainant went to the police station and registered the aforementioned FIR. During the investigation, the complainant recorded his further statement on 12-09-2016. In this statement, he disclosed the names of four unidentified accused individuals as: Ghulam Abbas, Ghulam Shabbir, Saeed, and Loung.

3. Learned counsels for the applicants submit that the applicants/accused are innocent and have falsely been implicated in this case by the complainant with malafide intentions and ulterior motives. They contended that the complainant in the FIR did not mention the names, features, and parentage of the applicants/accused. They further contended that the names of the applicant accused were disclosed in the further statement. It is contended by the counsel that the investigation was completed, and section 7 ATA was added to the challan malafidely. It is

further argued that no specific role has been attributed to the applicants/accused, and they have not caused any injury to the deceased or injured individuals. Therefore, the applicants are entitled to concession of bail. In support of their contention they relied upon the cases of *Ghulam Qadir Vs The State* (2003 YLR 1858) [Lahore], *Muhammad Ishaq Vs the State and another* (2011 YLR 781) [Lahore], *Ghulam Hussain Vs The State* (2013 MLD 1645), *Gulab Dahri Vs The State* (2009 YLR 181) [Karachi], *Nishan alias Nisho Vs The* (2005 YLR 310) [Karachi] and *Muhammad Irfan Vs The State and others* (2014 SCMR 1347).

4. Learned Additional P.G., assisted by learned counsel for the complainant, asserted that the applicants were present at the scene of the incident, each armed with their own weapons. Further argued, it was alleged that they aided and abetted the main accused in the commission of a grievous act of homicide, resulting in the deaths of three individuals. The counsel additionally argued that the learned trial court has already issued directions for the completion of the trial; in compliance thereof, the complainant has been examined, and the rest of the prosecution witnesses are attending the trial court on every scheduled hearing. If a direction is given to conclude the trial within a specified time frame, it will be adhered to in both its literal and intended sense.

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

6. Upon examination of the available record, it reveals that the First Information Report was lodged on the same day of the incident. No doubt, the names of the applicant accused are not mentioned in the FIR; nevertheless, these applicant accused have been implicated by

eyewitnesses in their statements recorded under Section 161 of the Criminal Procedure Code, as well as by the injured witness. Furthermore, the omission of the names of the accused applicants in the First Information Report (FIR) can be attributed to the fact that the complainant's three brothers were killed in his presence. The applicants accused were equipped with Kalashnikovs and successfully overpowered the opposing party. This action facilitated the co-accused persons, who were responsible for the murder of three innocent individuals and engaged in aerial firing with the intention of instilling fear at the scene of the offence. The applicants accused have been fugitives from the law for a significant duration, with no plausible justification provided.

7. It is evident from the record that the trial court, upon dismissing the applicants' bail applications, has issued the directions to the prosecution to complete the trial within four months, failing which the applicants were provided liberty to move the fresh bail applications. Admittedly the trial is in progress and some material witnesses have been examined. In this regard, the Honourable Supreme Court of Pakistan has observed that it is not advisable for the Courts to either grant or revoke bail during the ongoing trial. In such circumstances, it would be more appropriate for the Courts to give directions to the trial Court to expedite the trial proceedings and reach a verdict within a designated timeframe. In this respect, we are persuaded with the case of REHMATULLAH v. THE STATE and another (2011 SCMR-1332) wherein it has been held as follows:-

“The Courts should not grant or cancel bail when the trial is in progress and proper course for the Courts in such a situation would be to direct the learned trial Court to

conclude the trial of the case within a specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously."

8 . Based on the tentative evaluation of the available evidence, as previously discussed, the applicants are unable to make out their case for grant of bail. Consequently, the present bail applications of the applicants are rejected. However, the learned trial court is hereby directed, to conclude the trial preferably within a period of three months, and such compliance report be submitted through the additional register of this court.

9. Needless to say, the observations made hereinabove are tentative in nature and shall not cause prejudice to the right of either party at trial. The case law relied upon by learned counsels for the applicants accused are quite distinguishable from the facts and circumstances of the case in hand; hence, the same is not helpful.

10. The above are the reasons of our short order dated 23-08-2023, whereby the above bail applications were disposed of.

J U D G E

J U D G E