

(5)

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Criminal Bail Application No. S-211 of 2021

Applicant : Muhammad Mithal s/o. Ghulam Qadir Halipoto,  
through Mr. Ahmed Bux Abro, Advocate

Respondent : The State, through Mr. Aitbar Ali Bullo, DPG

Complainant : Dilshad Ali s/o. Khan Muhammad Sangi,  
through Mr. Jameel Ahmed Sangi, Advocate

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Dates of hearing : 12.07.2021

Date of order : 12.07.2021

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Having been rejected his earlier post-arrest bail application in Sessions Case No. 79 of 2020 by the learned VI-Additional Sessions Judge, Larkana vide order dated 28.04.2021, applicant/accused Muhammad Mithal s/o. Ghulam Qadir Halipoto through instant criminal bail application seeks post-arrest bail in Crime No. 114 of 2020, registered at P.S Civil Line, Larkana, under Section 302, 148 and 149, P.P.C.

2. Briefly stated facts of the case, as narrated in the aforesaid F.I.R. lodged on 27.11.2020 by the complainant Dilshad Ali s/o. Khan Muhammad Sangi, are that on said day at 03:30 p.m., the present applicant/accused along with co-accused, namely Mumtaz Ali, Ali Gul, Raees and two un-known persons, duly armed with pistols, reached common street, near Clinic of Dr. Najma Soomro, in Lahori Muhallah, Larkana, where on the instigation of applicant, the rest of the accused caused fire shot injuries to Muhammad Saqib Rafique, relative of the complainant, who subsequently died at hospital.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that there is an admitted annoyance between the complainant and Mumtaz Ali Halipoto

*(Signature)*




and the applicant has been falsely implicated in this case being member of Halipoto community; that there is an inordinate delay of 27 days in recording statements of eye-witnesses by the investigating officer under section 161, Cr.P.C.; that the applicant is an old person of sixty-three years who has been shown in the F.I.R. present at the place of incident with empty handed and only the allegation of instigation has been leveled against him, which falls within the ambit of further enquiry. (17)

4. On the other hand, learned counsel for the complainant and DPG have opposed the grant of bail to applicant on the ground that he has been nominated in the F.I.R. with specific role and on his instigation, co-accused committed murder of the deceased.

5. Heard the learned counsel for the applicant, complainant and DPG for the State as well as perused the material available on record.

6. It reflects that the applicant has been shown in F.I.R. present at the spot with empty handed. There is no description of overt act against him except the allegation of instigation. It is yet to be seen at trial as to whether the main accused acted independently or under the influence of the applicant; hence, the question of vicarious liability of the applicant with regard to the commonness of his intention for committing alleged offence will be determined at the trial. It is an admitted position that 161, Cr. P.C. statements of the eye-witnesses have been recorded by the investigating office after 27 days of the lodging of F.I.R., and such delay has not been explained by the prosecution. Though recording of statements of P.Ws with delay is not by itself is sufficient to discard its value, yet the credibility of a witness becomes highly suspicious if his statement is recorded with delay without affording any plausible explanation thereto. Under such circumstances, I have found the case against the applicant one of further inquiry into his guilt, as envisaged under subsection (2) of Section 497





Cr. P.C. Accordingly, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Lacs only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits. In case accused in any manner try to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

  
JUDGE