

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Criminal Bail Application No. S-722 of 2019

Applicant : Akram s/o. Dilmurad Jakhrani,  
through Mr. Zafar Ali Malghani, Advocate

Respondent : The State, through Mr. Ali Anwar, APG

Complainant : Saleemullah s/o. Sanaullah Odho, Nemo

Dates of hearing : -----  
06.02.2020

Date of order : 06.02.2020  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** After rejection of his earlier bail application bearing No. 1141 of 2019 by the learned Sessions Judge, Jacobabad vide order dated 23.11.2019, applicant/accused Akram s/o. Dilmurad Jakhrani through instant criminal bail application seeks post-arrest bail in Crime No. 6 of 2019, registered at P.S Tajodero, under Section 302, 148, 149, 337-H (2), P.P.C.

2. Briefly stated, the facts of the prosecution case as narrated in the aforesaid F.I.R. lodged on 25.03.2019 at 07:00p.m. by the complainant, namely, Saleemullah s/o. Sanaullah Odho, are that on 24.03.2019 at 8:30 p.m. while the complainant, his cousin Hamadullah, Aamir Hussain and Abdul Saeed were returning to their home on motorcycles from village Mir Afzal Brohi and reached Gul Shakh, accused persons with whom they already had murderous enmity, namely (1) Rehmatullah (2) Waheed (3) Sikandar Ali (4) Masti (5) Rustam (6) Shahzado, (7) Yakoob (8) Shahnawaz (9) Asghar (10) Akram and (11) Faiz Muhammad, duly armed with guns and rifles, in prosecution of their common object, signaled them to stop and saying that they would take revenge of murder of Azizullah, Rehmatullah, Waheed, Sikandar Ali and Masti made straight fires with their Kalashnikovs at Hamadullah, who fell down and died, while other accused persons made aerial firing and then they went away raising slogans.





3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case due to enmity; that there is delay of about 23 hrs. in lodging F.I.R. for that no plausible explanation has been furnished by the complainant; hence, deliberation and consultation for the false implication of the applicant cannot be ruled out; that role of causing death by firearms injuries has been assigned to co-accused and only allegation leveled against the applicant is of making aerial firing along with co-accused; that nothing has been recovered from the possession of the applicant to connect him with the commission of alleged offence and; as such, the guilt of the applicant requires further enquiry.

4. On the other hand, learned A.P.G. has opposed this application on the ground that the applicant has been nominated in the F.I.R. with specific role and forming an unlawful assembly and by sharing common object he came at the place of incident, duly armed with deadly weapon, along with co-accused and he made aerial firing to facilitate co-accused who committed murder of the deceased. He added that the delay in lodging F.I.R. *ipso facto* is no ground for the grant of bail to an accused facing charge of the offence that falls within the prohibitory clause of section 497 Cr. P.C.

5. Heard the learned counsel for the applicant and A.P.G. for the state and scanned the material available on record with their assistance.

6. It reflects from the perusal of the record that the F.I.R. has been recorded with delay of 23 hrs. and for that no plausible explanation has been furnished by the prosecution. No doubt, delay in lodging an F.I.R. *per se* is no ground for grant of bail, but where murderous enmity between the parties is an admitted fact, such delay may give right to presumption of having the accused falsely involved in the case after deliberation and consultation. So far sharing of common intention is concerned; suffice it to say that whether accused shared common

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intention with the principal offender when not a single injury has been attributed to him, guilt of such accused calls for further inquiry. Similarly, in the instant case, only allegation against the applicant is that of his presence at the time of murder of deceased at the spot and of firing in the air; besides it, no other overt act has been attributed towards him. 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. In the circumstances of the case mentioned above, 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 is admitted to bail subject to his furnishing solvent surety in the sum of Rs.3,00,000/- (Rupees Three 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 on merits. In case applicant tries to misuse the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

  
JUDGE