

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Applns. No. S- 368 and 369 of 2015.

& Cr. Bail Appln. No.S-337 of 2016.

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Date Order with signature of Judge.

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For Hearing.

28.11.2016.

Mr. Syed Aijaz Ali Shah, advocate for the applicant in Cr.Bail Appln. No.S-368 and 369 of 2015. .

Mr. Sardar Ali Shah, A.P.G.

Mr. Shamsuddin Abbasi, advocate for the complainant.

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**Muhammad Iqbal Kalhoro-J.:-** Applicant Papoo @ Bhai Khan Bhayo has filed two bail applications viz. Cr.Bail Appln. No.368 of 2015 in Crime No.18 of 2015 registered U/Ss 302, 148, 149, 114 PPC at P.S Karan Sharif District Shikarpur, and Cr. Bail Appln. No.S- 369 of 2015 in Crime No.102 of 2015 registered U/S 23 (a)(i) of Sindh Arms Act 2013 at P.S New Faujdari Shikarpur while applicant Rasheed Bhayo has filed a Cr. Bail Appln. No.S- 337 of 2016 in Crime No.18 of 2015 registered U/Ss 302, 148, 149, 114 PPC at P.S Karan Sharif District Shikarpur; and by this common order all three bail applications are disposed of.

The F.I.R in the main case was registered on 25.04.2015 at about 14000 hours by the complainant reporting that on 24.04.2015 at 0400 hours the applicants held the deceased namely Manthar Ali from his both arms and thereafter co-accused Rahib by making fire from his gun caused his murder in presence of him and his brother Assadullah. Complainant in the FIR has nominated in all eight(8) accused who according to him were armed with different weapons including K.Ks and guns and the motive, according to him, was that a day before the incident co-accused Abid had beaten his wife namely Mst.Aamina and they being neighbours had intervened and saved her onwhich the accused were annoyed. It appears that none of the accused could be arrested during the investigation, therefore, the report U/S 173 Cr.P.C was submitted against them U/S 512 Cr.P.C. However, subsequently applicant Papoo @Bhai Khan was arrested on 11.6.2015 and allegedly from him the gun used in the commission of offence was recovered. Applicant

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Rasheed Bhayo was arrested on 09.12.2015 and their post arrest bail applications in the above crimes/offences have been dismissed by the trial Court.

M/S.Syed Aijaz Ali Shah and Shahbaz Ali M. Brohi learned defence counsel have argued that the applicants have been falsely implicated in this case; that role of holding the deceased at the time of incident requires further enquiry, as it is strange that although the applicants themselves were armed with weapons, but instead of using them, they merely held the deceased by arms. In support of their arguments, they have relied upon the case laws reported in 2004 Y.L.R 1732, SBLR 2015 Sindh 433, PLJ 2013 Cr.C (Lahore) 986.

On the other hand, learned A.P.G and counsel for the complainant have opposed grant of bail to the applicants on the ground that applicants are nominated in the F.I.R with specific role of holding the deceased by both the arms and thereby facilitating the main accused Rahib to commit his murder. Learned counsel for the complainant as well as A.P.G, in support of their arguments, have relied upon the case laws reported in 2010 MLD 1137, 2002 P.Cr.L.J 1277, 1999 P.Cr.L.J 343, 1979 SCMR 65 and 1979 SCMR 114.

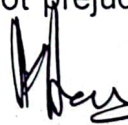
I have considered the submissions and perused the material available on record. In the F.I.R in all eight(8) accused are nominated but the main role is attributed to only one accused namely Rahib. From the place of incident allegedly only one empty was recovered. Learned A.P.G has admitted that memo of place of incident does not show footprints of eight accused. Role of the applicants in the backdrop of the above requires further enquiry. The allegation that the applicants held the deceased by arms, although they themselves were armed with weapons, also requires further enquiry particularly when it is the case of the prosecution that the deceased was done to death by being fired at by other accused.

Insofar as the case falling U/S 23(a)(i) of Sindh Arms Act 2013 registered against applicant Papoo @Bhai Khan is concerned; he is behind the bars since time of his arrest viz. 11.06.2015 and uptill now the said case has not been concluded. Challan has been submitted and the applicant Papoo @Bhai Khan is no more required for further investigation. The contents of F.I.R in the main case does not show that applicant had used the gun but strangely in the F.I.R U/S 23(a)(i) of Sindh Arms Act, 2013, it is stated that the said gun was used in the commission of the offence and at the time of recovery was smelling to have been fired.



In view of above discussion, I am of the view that the case of applicants require further enquiry and they are entitled to the bail. Resultantly I grant post arrest bail to the applicants subject to their furnishing a solvent surety in the sum of Rs.200,000/= in each case and P.R bond in the same amount to be executed before the trial Court. The trial Court is directed to proceed with the case of applicants expeditiously and conclude it within a period of six months. In case there are absconders in the case the trial Court shall separate their case from the applicants and proceed with the trial in accordance with law.

The bail applications are disposed of in above terms. The findings recorded here are tentative in nature and would not prejudice either party in the trial.

  
JUDGE 28-11-2016.

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