

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

Bail Applications No. **S-554** of **2016**

APPLICANT : Fateh Ali s/o Ahmed Bux Gopang,
through Mr. Ahmed Bux Abro, Advocate

RESPONDENT : The State,
through Mr. Sardar Ali Shah, A.P.G.

COMPLAINANT : Mashooq Ali, through
Mr. Rafique Ahmed K. Abro, Advocate

Date of Hearing : 12.06.2017


Date of Order : 12.06.2017

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Criminal Bail Application, under Section 497 of Cr. P.C., the applicant/accused, namely, Fateh Ali s/o Ahmed Bux Gopang seeks post-arrest bail in Crime/ F.I.R No.69 of 2015, registered under Section 302, 324, 337-H (2),114, 148, 149 P.P.C. at Police Station Sijawal. His earlier application for grant of bail being No. 1091 of 2016 was rejected by the learned Sessions Judge, Kamber-Shahdadkot @ Kamber, vide order dated 08.09.2016.

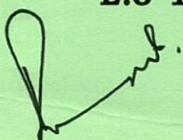
2. The precise allegation against the applicant/ accused is that on 20.08.2015 at 0600 hours, he and co-accused Wahid Bux fired shots at Allah Dino, who was brother of the complainant. The shot fired by the present accused hit on the right wrist, while shot fired by the co-accused Wahid Bux hit on the right lower back of the deceased Allah Dino who succumbed to the injuries.

3. Learned counsel for the accused has mainly contended that the accused is innocent and has falsely been implicated in this case



by the complainant with mala fide intention and ulterior motives; that the accused was arrested by police on 30.08.2015 and since then he is confined in jail; that as per F.I.R. the accused has been assigned the role of causing firearm injury to deceased Allah Dino on his right wrist but in post-mortem report no injury on right wrist of the deceased has been shown; however, it discloses an injury on the left wrist of the deceased, which is not vital part of the body and the vicarious liability, if any, shall be determined after full-fledged trial in the case, hence the accused is entitled to the concession of bail. In support of his contentions, the learned Counsel has referred the case of Iqbal Ahmed and another v. The State (2006 MLD 1930).

4. Conversely, Learned counsel for the complainant has opposed this application on the grounds that the accused is nominated in the promptly lodged F.I.R. for the commission of murder of deceased Allah Dino, he shares common object with the co-accused Wahid Bux and the alleged offence of *Qatl-i-amd* being punishable for death, imprisonment for life or imprisonment up to 25 years falls within the prohibitory clause of Section 497 Cr. P.C; therefore, the accused is not entitled for the bail. In support of his contentions, the learned counsel has relied on the case of Shahid v. The State (2004 SCMR 1018) Ameer Bakhsh alias Kuraro v. The State (2013 YLR 156) Allah Bachayo alias Bachoo v. The State (2013 P. Cr. L.J 1387) Mushtaq Ahmed v. The State (2013 YLR 1158) Adeel Iqbal v. The State and another (2011 P. Cr. L.J 609) shabbier Khan v. The State and 2 others (2010 P. Cr. L.J 396) Liaqat Ali v. The State (2006 YLR 3114) and Muhammad Khan v. The State (2011 P. Cr. L.J 180).



5. Learned A.P.G. while adopting the arguments of learned counsel for the complainant has also opposed this application.

6. I have heard the learned counsel for the parties and perused the material available on record with their assistance so also the case-law cited by the learned counsel for the parties.

7. Perusal of record shows that the applicant has been named in the F.I.R. with specific role of causing firearm injury to the deceased on his right wrist. P.W. Jawed Ahmed has also deposed in his statement, recorded under section 161 Cr. P.C, that the accused caused firearm injury to deceased at his right wrist, but the post-mortem report does not suggests any injury on the right wrist of the deceased; however, it discloses an injury on the left wrist of the deceased, which is being on non-vital part of the body depicts non-contribution towards death of the deceased. The fatal firearm injury has been attributed to co-accused Wahid Bux.


8. The record further reveals that as per memo of site inspection, police has secured 4/4 empties of 30 bore pistol and 12 bore cartridges from the spot, but in challan police has shown 3/3 empties of 30 bore pistol and 12 bore cartridges as case properties. As per memo of arrest, the present accused was arrested on 30.08.2015 and on his pointation, police recovered one un-license pistol of 30 bore on 31.08.2015, allegedly used by him for causing injury to deceased attributed to him. Admittedly, the alleged recovered pistol and secured empties of 30 bore pistol have not been sent to ballistic expert. As such, veracity of the allegations leveled against the accused could be determined by the trial Court after

recording evidence. Hence, the case of the accused fall within the ambit of further enquiry into his guilt covered under sub-section (2) of the Section 497 Cr. P.C.

9. So far the case-law cited by the learned counsel for the compliant is concerned; I am of the humble view that the same are not applicable in the case of present accused being on distinguishable facts. As in the cited case-law, the bail was refused to accused on the ground that they had caused fatal injuries to deceased, except in the case of Adeel Iqbal (supra) whose bail application was dismissed by the Single Judge of the Lahore High Court on the ground that he was fugitive from law and he failed to make out any case of further inquiry.

10. Consequently, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs Only) and PR Bond in the like amount to the satisfaction of the trial Court.

11. 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 applicants on merits and if accused in any manner tries 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