

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st CrI. Bail Appln. No S-484 of 2017

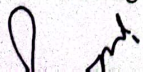
Date of Hearing 20.11.2017.	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of Bail Application.

Mr. Ashique Ali Jatoi, advocate for applicants/accused.
Mr. Ahsan Ahmed Qureshi, advocate for complainant.
Mr. Khadim Hussain Khooharo, Addl. P.G.

Through this application, applicants Javed Ali and Sajid Ali, both by caste Khor, seek post arrest bail in Crime No.20/2017, registered at Police Station Nasirabad, District Kamber-Shahdadkot at Kamber, under Sections 302, 337-H(2), 147, 148, PPC.

2. Briefly stated, the facts of the prosecution case are that on 18.3.2017 complainant Orangzeb Khor lodged FIR at Police Station Nasirabad, stating therein that he was originally residing in Village Wanji Khor and due to dispute with his relatives he had shifted to Village Jooharpur, however, the uncle of complainant, namely, Abdul Fattah Khor was still residing in the said village so also the agricultural land of complainant were situated there. It was alleged in the FIR that on 16.3.2017, complainant together with his brothers, namely, Babar Ali, Munsif Ali, and maternal uncle Abdullah Pathan went to complainant's uncle Abdul Fattah Khor at Village Wanji Khor, from where they all went to visit their agricultural land. Then they having torches in their hands were returning back from the land, Babar Ali was proceeding at some distance ahead of them. At about 10.00 p.m. when they reached at the land of Abdul Fattah Patojo near Village Wanji Khor, on the torchlight they saw five armed persons with open faces approaching them from village side, out of whom they identified three persons to be 1. Waheed Ali son of Murtaza having pistol, 2. Javed Ali son of Muhammad Ali with pistol, 3. Sajid Ali son

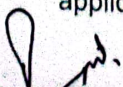


of Abdul Majeed having repeater gun, and two unidentified persons armed with guns. After some altercation between both parties, accused Waheed Ali Khor fired pistol shot at Babar Ali hitting him at his chest, who fell down by raising cry, whereafter all the accused persons making aerial firing over the complainant party fled away towards village side. Complainant party took Babar Ali in injured condition to Civil Hospital, Larkana, where he succumbed to injuries. Complainant then got conducted postmortem of deceased at Nasirabad hospital and remained busy in burial and funeral ceremonies, whereafter on 18.3.2017 he went to police station and lodged FIR.

3. The learned Counsel for the applicants/accused has mainly contended that the allegations against the applicants are merely of being present at the spot and of making aerial firing causing no injury to any person, as such, the vicarious liability, if any, for the commission of alleged offence would be determined after full-fledged the trial, hence the case of the applicants falls within the ambit of further enquiry as envisaged under Section 497(2), Cr.P.C.

4. On the other hand, learned Counsel for the complainant has vehemently opposed this application on the grounds that the present applicants/accused provided complete shelter to co-accused Waheed Ali to commit murder of brother of the complainant, therefore, they are not entitled for the concession of bail and their presence at the spot is witnessed by as many as three eye-witnesses and the police has recovered empties of the shots made by the present applicants/accused from the spot.

5. Learned Addl. P.G, while supporting the contentions of learned Counsel for the complainant, has also opposed the grant of bail to the applicants/accused.



6. Heard the learned Counsel for the parties and perused the material available on record.

7. It appears that the applicants are nominated in the FIR with the role of making aerial firing, when co-accused Waheed Ali caused fatal firearm injury to deceased Babar Ali and they were identified at the spot by three witnesses, as such, apparently they facilitated to main accused to achieve the object of committing the murder of said deceased. Moreover, during the course of site inspection I.O collected empties from the spot, which were sent to the Ballistics Expert and the same have matched with the weapons, which, as per prosecution case, were recovered on the pointation of present applicants/accused. It is settled principle of law that once it is found that the accused persons had common intention to commit the crime, it is immaterial as to what part was played by whom, as law as to vicarious liability is that those who stand together, must fall together and none of those who make commission of crime, a common cause can be allowed to raise a plea that he was merely present at the spot and that the part assigned to him was insignificant.

8. For the foregoing facts and reasons, there appears ^{- prima facie -} sufficient material available with prosecution to connect the applicants/accused with commission of alleged offence. Hence, this criminal bail application is dismissed, however, with directions to the learned trial Court to proceed with the matter expeditiously and at-least examine the eye-witnesses in the case preferably within a period of 3 months hereof, whereafter the applicants shall be at liberty to repeat the application for grant of bail, if so advised.


JUDGE