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ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Misc. Appln. No. S- 64 of 2015.

Date of hearing	Order with signature of Judge
13.10.2015.	

Mr. Nooruddin Mahessar, Advocate for applicant/complainant.  
Mr. Safdar Ali Bhutto, Advocate for respondents No.1 and 2.  
Mr. Khadim Hussain Khooharo, D.P.G.

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Through this criminal miscellaneous application, the applicant has assailed Order dated 18.5.2015, passed by learned Additional Sessions Judge, Kamber, whereby respondents No.1 and 2, were admitted to pre-arrest bail.

2. The case of prosecution is that on 24.3.2009, applicant/complainant Muhammad Farooque Magsi lodged report with P.S Kamber, in the following wording:

"It is compliant that, my father Haji Pakistani and his friend Ghulam Mustafa Sehmirzai Magsi were living together in Dubai, who have tyre shop as partners. Sometime ago Ghulam Hyder Magsi asked that your father is partner with our enemy Ghulam Mustafa and if your father will continue such business with Ghulam Mustafa, he would be caused harm, to which Ghulam Hyder and others were annoyed with my father. Yesterday evening my father returned from Dubai. Today morning, I, my maternal uncles Abdul Qadir, 2. Allahdino both sons of Dhani Bux Magsi resident of Roshan Ali Shaikh and my father Haji Pakistan son of Ghulam Nabi aged about 50-years were coming together to Kamber town with some work, as such when at about 11.00 a.m. we reached road leading towards Dost Ali near Muslim Commercial Bank Kamber, where we saw in front of us, Ghulam Hyder son of Mirza Magsi, 2. Mujahid, 3. Qurban both sons of Ghulam Hyder Magsi, 4. Abdul Wahab son of Qurban Magsi, all four resident of Ali Khan Muhalla Kamber, 5. Ahmed Ali son of Peeral Magsi, 6. Muhammad Nawaz son of Niazal Magsi, 7. Ghous Bux son of Peeral Magsi, 8. Ashique son of Mashooq Magsi, resident of Phaal, Taluka Kamber came there, all of them took out pistols from their folds and asked that they will murder Haji Pakistan, Abdul Qadir and Allahdino and challenged that no to come near us; saying so accused Abdul Wahab, Ahmed Ali, Muhammad Nawaz, Mujahid, Qurban and Ashique with their respective pistols made direct fire at my father Haji Pakistani who fell down by raising cry. Accused Ghulam Hyder with his pistol made straight fire at my maternal uncle Abdul Qadir who also cries and fell down and accused Ghous Bux with his pistol directly fired at my maternal uncle

Allahdino. Then all the accused persons escaped away towards western directions with their pistols. Thereafter, we saw that my father Haji Pakistani was having injuries on chest, over navel, back, right side iliac region and on abdomen, he was bleeding; my maternal uncle Abdul Qadir had injuries on calf of left leg and over knee, he was bleeding and my maternal uncle Allahdino had fire injury on his head, he was bleeding. I immediately arranged conveyance and removed my injured father Haji Pakistani and my maternal uncles Abdul Qadir and Allahdino to Taluka Hospital Kamber, from where we were referred to Larkana Hospital, however on the way my father Haji Pakistani succumbed to injuries; then leaving injured Abdul Qadir and Allahdino for treatment, I brought dead body of my deceased father Haji Pakistani to Taluka Hospital, Kamber, where I left dead body of my deceased father Haji Pakistani under safeguard of my other relatives, now I have come to report the matter that above named accused persons duly armed with pistols with their common intention and due to above mentioned annoyance have committed murder of my father Haji Pakistani by firing direct pistol shots and have severely injured my maternal uncles Abdul Qadir and Allahdino. I am complainant, investigation may be made."

3. Learned counsel for the applicant/complainant contended that, the impugned order passed by learned trial court granting bail to accused/ respondent No. 1 to 2, is contrary to law and facts; that the impugned bail order passed by learned trial Court is without appreciating the legal points, such as ocular version, corroborated by eyewitnesses; while admitting accused to bail, has not recorded the cogent and convincing reasons; that, the version of the complainant also stands corroborated by the medical evidence; that the respondent No. 1 and 2 have been nominated in the F.I.R, with their names, parentage etc. and the specific role in the commission of offence; that accused/ respondent No.1 (Ghulam Hyder) has been assigned specific role of making direct fire with pistol at P.W Abdul Qadir with intention to commit his murder, which hit him, but it was his luck that he survived; that accused/ respondent No.2 (Mujahid) alongwith other co-accused has been assigned specific role of making fire at deceased Haji Pakistani, which resulted into his death.

4. On contra, learned counsel for respondents No.1 and 2 supported the impugned order and contended that the learned trial

6

Court has rightly granted bail to the respondents/accused; that previous grudge and enmity between the parties over transaction of amount at Dubai is admitted in the F.I.R, which shows malafides on the part of complainant for filing instant case against accused; there are general allegations of firing upon deceased and no specific role has been assigned to any of accused, therefore, it would be determined at the time of trial as to which of accused caused fatal shot to deceased; that there is delay of six days in recording statements of prosecution witnesses under Section 161 Cr.P.C which are also fatal to prosecution; that co-accused Ahmed Ali has been granted bail by this Court, whereas other co-accused Muhammad Nawaz was granted bail by learned trial Court and case of present accused is on same footings, therefore, on the basis of rule of consistency they were entitled for same concession and have rightly been admitted to bail by learned trial Court.


5. Learned D.P.G. contended that, at this stage, instant application is not maintainable.

6. Heard learned counsel for respective parties. Perused record.

7. Record reveals that role of accused/ respondent Mujahid is identical to co-accused Ahmed Ali and Muhammad Nawaz, who were granted bail by this Court vide Order dated 22.11.2010 and by learned trial Court vide order dated 29.12.2010 respectively, and the case of applicant is on same footings. The role attributed to accused Ghulam Hyder is that he caused injury to PW Abdul Qadir and after three months and twelve days he succumbed to injuries. Since granting of pre-arrest bail has been attending in the Court for proceeding and confirmation of bail. In the meanwhile, the complainant party committed murder of co-accused Ahmed Ali on 18.03.2013.

8

8. It is settled principle of law that, once a bail is granted by trial Court there should be strong reasons for its cancellation, preferably when the case is fixed for evidence ordinarily the bail applications are not decided on merits and the matter is often left to the discretion of the trial Judge. Learned counsel for the applicant conceded that the charge has been framed and the case is fixed for evidence. Besides learned counsel for applicant failed to point out any illegality in impugned order, hence instant application is dismissed.

  
Judge