

ORDER SHEET

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

Criminal Bail Application No.S-159 of 2013

Criminal Bail Application No.S-1101 of 2016

Date of hearing: 24.11.2017.

Date of Decision: 24.11.2017.

Applicants (B.A No.S-159/2013): 1) Sher Muhammad s/o Essa Khan Jogi, 2) Sher Ali alias Ali Sher s/o Gul Muhammad Pathan and 3) Mehboob Ali s/o Gul Muhammad Khoso (arrested) through Mr. Muhammad Hashim Laghari, advocate.

Applicant (B.A No.S-1101/2016): Zeeshan through Mr. Ghulamullah Chang, advocate.

Respondent: The State through Syed Meeral Shah, Additional Prosecutor General, Sindh.

Complainant: Through Mr. Muhammad Akhtar Bhatti advocate.

ORDER

MUHAMMAD IQBAL KALHORO, J: - By this common order, Criminal Bail Application No.S-159 / 2013 filed by applicants Sher Muhammad, Sher Ali and Mehboob Ali seeking pre-arrest bail under section 498 Cr.P.C. and Criminal Bail Application No.S-1101 / 2016 filed by applicant Zeeshan seeking post arrest bail in the same crime bearing No.258 / 2012 of PS Tando Allahyar, registered under sections 324, 34 PPC 6/7 ATA, 1997, are disposed of.

2. Brief facts are that the complainant Khalilur Rehman has lodged the above stated FIR on 20.10.2012 at 1800 hours alleging that on 18.10.2012, he was present with his friends namely Taimoor and Kamran in Mobile Market, Tando Allahyar, when four persons riding on two motorcycles came who were armed with weapons and who seeing him started firing, three bullets hit him on his right leg and one bullet on his right arm, whereas, one bullet hit a child namely Atique Rehman as a result of which they were injured. Complainant has further revealed that he identified the said four persons to be Sher Muhammad Jogi, Zeeshan Jiskani, Mehboob Samo and Ali Sher Pathan. After such incident, he was taken to the hospital for

treatment and only after being discharged there from he appeared at PS and registered the FIR.

3. Mr. Ghulamullah Chang, learned counsel for applicant Zeeshan has argued that applicant is innocent and has been falsely implicated in this case; that there is delay of two days in lodging the FIR, which has not been explained; that there are general allegations against the applicant; and no specific role or injury is attributed to anyone; that neither the number of motorcycles nor the kind of weapons is mentioned in the FIR; that incident is alleged to have taken place in a thickly populated area but no private person is cited as a witness; that on the same day viz.18.10.2012, one Muhammad Hamid, who is relative of the complainant got an N.C No.21 of the incident registered, in which he has not nominated any one of the applicants; that although, the incident is said to have taken place at 1730 hours but memo of injury is shown to have been prepared at 1630 hours, which is one hour before the incident, therefore, this case requires further enquiry. In support of his contentions, he has relied upon PLD 2004 Supreme Court 477, 2009 SCMR 299, 2005 MLD 1267, 2001 YLR 912, 2012 SCMR 606 AND 2004 SCMR 1467.

4. Mr. Muhammad Hashim Laghari advocate for applicants in Criminal Bail Application No.S-159 / 2013 at the very outset has informed that applicant Mehboob Ali has been arrested in some other crime and presently he is in custody, therefore, to the extent of him, he does not press this bail application, which is accordingly dismissed as not pressed. However, about remaining applicants, he states that the applicant Sher Muhammad is complainant of FIR No.56 / 2012, in which the complainant is nominated as main accused for causing murder of his brother, and he has been granted bail by the Hon'ble Supreme Court of Pakistan, therefore, the applicants are also entitled to the same treatment and relief. He has further argued that this case has been registered as a counterblast to the case of the applicant Sher Muhammad, in which his brother has been murdered by the complainant, only to pressurize the applicants to come to terms with him. He has further argued that all the injuries are shown on non-vital parts of the body of the injured and are punishable upto seven years, therefore, do not fall within the prohibitory clause of section 497 (1) Cr.P.C. Learned counsel in support of his arguments has relied upon the case law reported in 2011 MLD 688, 2011 P.Cr.L.J 361, 2012 YLR 2703, 2012 YLR 2566, 2011 MLD 1049, 2010 YLR 253, 2012 YLR 747 and 2012 YLR 1880.

5. On the other hand, learned A.P.G. Sindh and learned counsel for the complainant have opposed these applications on the ground that applicants are nominated in the FIR and they have caused fire arm injuries to the victims; that against the applicant a number of FIRs have been registered and the applicant Zeeshan was declared as proclaimed offender before his arrest on 01.11.2016, therefore, they are not entitled to grant of bail.

6. I have considered the submissions of parties and perused the material available on record including the case law cited at bar. The incident is alleged to have taken place on 18.10.2012 at 1530 hours, whereas, the FIR was registered after delay of two days on 20.10.2012 at 1800 hours. The explanation furnished in this connection is that the complainant was in hospital and after discharge there from, he lodged the FIR. However, in the given facts and circumstances, this explanation does not appear to be satisfactory, because in the FIR, the complainant himself has reported that he along with his two friends were present when the incident took place, therefore, his friends' remaining mum for two days without lodging the FIR cannot be ignored. Moreover, as per daily diary entry No.21 dated 18.10.2012, about the incident, which was got registered by a relative of the complainant, no one is named and it has been simply informed that complainant Khalilur Rehman has sustained firearm injuries. The fact that complainant is nominated in a FIR bearing No.56 / 2012 registered by applicant Sher Muhammad for murder of his brother and has been granted bail, is relevant for the purpose of considering bail plea of the applicants. The injuries sustained by the injured do not fall within prohibitory clause under section 497 (1) Cr.P.C. The challan has been submitted and the applicants are no more required for further investigation.

7. In view of above, I am of the view that applicants have been able to make out the case for grant of bail. Consequently, the applicant Zeeshan is granted bail subject to his furnishing a solvent surety in the sum of Rs.1,00,000/- (Rupees one hundred thousand only) and PR Bond in the like amount, to the satisfaction of trial Court. Whereas, bail of applicants Sher Muhammad and Sher Ali is confirmed on the same terms and conditions laid down in the order dated 08.03.2013 passed by this Court in Criminal Bail Application No.S-159 of 2013.

8. The above observations made hereinabove are tentative in nature and would not prejudice the case of either party before the trial Court.

JUDGE