

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Criminal Bail No.S-380 of 2023

Applicants: (1). Noorullah son of Hakim Ali Chandio.
(2). Abdul Ghafoor son of Nabi Bux Chandio.
Through Mr. Habibullah G. Ghouri, Advocate.

Complainant: Mst. Iqbal Khatoon, through Mr. Sarfaraz Ahmed Chandio, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 28.09.2023

Date of Order: 28.09.2023

ORDER

SHAMSUDDIN ABBASI, J.- Through instant bail application, the applicants seek post arrest bail in the case emanating from F.I.R No.55/2022, registered at P.P Dost Ali, Police Station Drigh for offence punishable under Sections 302, 337-H(2), 148, 149 P.P.C. after their bail plea was rejected by the learned 1st Additional Sessions Judge, Kamber vide Order dated 22.06.2023.

2. The brief facts of the prosecution case are that on 16.11.2022 at 03:30 p.m. complainant Mst. Iqbal Khatoon lodged F.I.R. of the alleged incident, wherein she alleged that on the same day at 02:30 p.m. present applicants alongwith nine other accused armed with deadly weapons came at the scene of offence and committed murder of deceased Moula Bux. The motive is murderous enmity between the parties.

3. Learned counsel for the applicants has mainly contended the applicants/accused are innocent and they have been falsely implicated in this case by the complainant with malafide intention and ulterior motives due to murderous enmity; that there is delay of one hour in lodgment of the F.I.R. without plausible explanation by the

complainant; that no role has been attributed to the present applicants, whereas specific role has been assigned to co-accused Hakim Ali and Sartaj. Learned counsel further submitted that point of vicarious liability would be determined at the trial, the alleged recovery of weapon has been foisted upon applicant Noorullah has been managed in order to strengthen the case and at this stage the applicants are entitled to the concession of bail.

4. On the other hand, learned Deputy Prosecutor General appearing for the State and the learned counsel for the complainant have vehemently opposed the grant of bail to the applicants/accused on the ground that the applicants/accused had actively participated in the alleged offence and facilitated the principal accused, who committed murder of deceased Moula Bux and during investigation the crime weapon i.e Repeater has been recovered from applicant Noorullah and the same was sent to the chemical examiner and such FSL report is in positive, which connect the applicant with the alleged offence.

5. Heard learned counsel for the applicants, learned Deputy Prosecutor General, learned counsel for the complainant and perused the material available on record. It is a matter of record that there is murderous enmity between the parties and in the background of enmity it cannot be ruled out that the F.I.R. has been lodged after due deliberation and consultation. The complainant has implicated in all eleven persons, out of them specific role of causing firearm injury to the deceased has been assigned to co-accused Hakim Ali and Sartaj, whereas remaining accused have only fired in the air. The applicants are in jail and no more required for further investigation and their detention will not improve the case of the prosecution. In my humble view mere presence and point of vicarious liability require further enquiry in terms of section 497 (2) Cr.P.C. Reliance in this respect is placed on case of **Jahanzeb and others v/s. The State** (2021 SCMR 63) and on the case of **Muhammad Rafique and others v/s. The State** (2010 SCMR 385).

6. In view of the foregoing reasons and discussion, I am of the considered view that the applicants have successfully made out their case for grant of bail. Accordingly, instant bail application is allowed.

Applicants Noorullah and Abdul Ghafoor are admitted to the post arrest bail subject to their furnishing a solvent surety in the sum of Rs.300,000/- (*Rupees Three Hundred Thousands only*) each and P.R bonds in the like amount to the satisfaction of the learned trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of either party at trial.

Judge

Manzoor