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ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Bail Appln. No. S- 271 and S- 297 of 2017.

Date of hearing  
23.08.2017.

Order with signature of Judge

Mr. Athar Abbas Solangi, Advocate for applicants.  
Mr. Rafique Ahmed K. Abro, Advocate for complainant.  
Mr. Aijaz Mustafa Samtio, DDPP.

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Omar Sial, J: Applicants Habib Ahmed and Khalil Ahmed in Criminal Bail Application No. 271 of 2017 have sought pre-arrest bail in crime number 16 of 2017 registered under Sections 302, 114 and 34 PPC at the Civil Lines Police Station, Larkana, whereas Applicant Jamil Ahmed has sought post arrest bail in the same crime in Criminal Bail Application No. S- 297 of 2017. Through this common order I will dispose of both the applications.

Brief facts of the prosecution case are that on 31-3-2017 the complainant Zafar Ali Khoso lodged the above mentioned FIR reporting therein an incident that had occurred on 29-3-2017. He stated that on that date he along with his son Saddam Hussain, his brother Nadir Ali and another relative Arz Mohammad had taken his father for medical treatment to the Indus Medical Centre. The next day i.e. on 30-3-2017 the three gentlemen left the hospital on foot to buy some supplies. When they reached near Amber X-ray at about 8:10 a.m. three persons emerged from a nearby street. The complainant identified them as Habib Ahmed, Khalil Ahmed (the Applicants in Criminal Bail Application No. 271 of 2017) and Baran Brohi. Upon the instigation of Khalil Ahmed, Baran Brohi and Habib Ahmed took out pistols and fired on Saddam Hussain. The complainant party chased the assailants as they attempted to flee from the spot. A little further down the road they saw that a silver colored wagon bearing registration number JF-7320 was standing with its engine on and was being driven by Jamil Ahmed (Applicant in Criminal Bail Application No. S- 297 of 2017). Habib and Khalil both sat in the wagon which then drove away. The

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complainant party went back to the scene of incident and saw that Saddam Hussain was dead.

Subsequently, Applicant Jamil Ahmed was arrested, whereas Habib Ahmed and Khalil Ahmed were given interim-pre-arrest bail by this Court on 29-6-2017. Accused Baran Brohi remains an absconder in the crime.

I have heard the learned counsel for the applicants and the complainant as well as the learned DDPP and have also examined the record with their able assistance. My observations are as follows.

- (i) The learned counsel for the applicants has primarily taken the plea of alibi in support of his case as far as applicants Habib Ahmed and Khalil Ahmed are concerned. He argued that it was not possible that these applicants had committed the murder of the deceased on 29.03.2017 as on that date, both applicants were arrested by the Balochistan police in cases of possession of unlicensed weapons (being FIR No.03 of 2017 and FIR No.04 of 2017 registered under Section 13 (e) of the Pakistan Arms Ordinance, 1965). He further contended that both accused were produced before the concerned Magistrate in Balochistan for the purpose of remand on 30.03.2017. The learned counsel however admits that at this stage he has no evidence to substantiate his argument. The only evidence produced in this Court is an order dated 26.04.2017 passed by the learned Judicial Magistrate-III, Larkana, which he had made on the section 173 Cr.P.C. report filed by the investigating officer in the present crime. At paragraph (viii) and (ix) of this order, the learned Magistrate has referred to the evidence collected by the investigating officer regarding the two cases against the applicants registered in Balochistan. In these paragraphs themselves, it is stated that the investigating officer was given a certificate bearing number 119 dated 13.04.2017, in which the learned Magistrate in Balochistan has certified that the applicants Habib and Khalil were presented before him on 30.03.2017 at about 6:30 p.m. or 6:45 p.m. On the face of it this certificate, which in any case has not been produced by the learned counsel for the applicants during the hearing of these applications, does not conclusively establish the presence of the applicants in Balochistan at the time the murder of Saddam Hussain was committed in Larkana. The vague and unsubstantiated plea of alibi, in my opinion, is of no help to the applicants at this

stage of pre-arrest bail and their presence in Balochistan, if at all, will have to be determined after evidence is led.

- (ii) I have considered the fact that it is applicant Habib Brohi who has been nominated as the person who fired on the deceased and whose fire hit the deceased on his belly. The other fire to the face of the deceased was made by the absconding accused Baran Brohi. Applicant Khalil Brohi has been assigned the role of instigation. At this pre-arrest stage however especially when no ulterior motive or malafide on the part of the complainant or the police is alleged by the applicants, no concession is shown towards the applicant Khalil Brohi for any doubt regarding whether he shared a common intention with the other accused or not.
- (iii) Prima facie, a young man was murdered; he was shot in the face and his stomach by two of the three assailants; the FIR was registered promptly; the prosecution witnesses have ostensibly supported each other; the father of the deceased is an eye witness of the murder; post mortem was conducted in a timely manner and the findings support the ocular version; a bullet has been recovered from the body during the post mortem; it was a day time occurrence; no malafide or ulterior motive has been alleged; investigation is still not complete and recoveries have still to be made. There is prima facie sufficient evidence on record to establish a nexus of the applicants Khalil and Jamil Ahmed with the crime.
- (iv) As regards Applicant Jamil, it is alleged that he was the getaway driver for the co-accused after they had committed the murder. He was not on the scene in fact was at some distance sitting in a vehicle. Whether, he shared a common intention with the co-accused to murder the deceased is yet to be established after trial. In my opinion, his involvement in this murder requires further enquiry.

Above are the reasons for my short orders of 23.08.2017 in terms of which the pre-arrest bail application of applicants Khalil Ahmed and Habib Ahmed was dismissed, whereas applicant Jamil Ahmed was admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs.500,000/- (Five hundred thousand rupees) and a PR Bond in the like amount subject to the satisfaction of the trial Court.

  
31/8/17  
JUDGE