

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail A. No.S-287 of 2021***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on O/objection at flag-A.
2. For hearing of bail application.

**09.08.2021**

Mr. Shabir Ali Bozdar Advocate for applicant.  
 Mr. Ghulam Murtaza Korai Advocate for complainant.  
 Mr. Aftab Ahmed Shar Addl.P.G for state.

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**ORDER**

**ZAFAR AHMED RAJPUT;** Having been rejected their earlier Crl. Bail application bearing No.235 of 2021 by learned Additional Sessions Judge, Kandiaro vide order dated 07.05.2021, applicants/accused Sher Muhammad son of Mour and Abdul Hameed son of Muhib through instant Crl. Bail application seek post-arrest bail in Crime No.11 of 2021 registered at Police Station, Kandiaro under Sections 302, 324, 148, 149, 337H(ii) PPC.

2. Briefly stated facts of the case as narrated in the aforesaid FIR are that on 22.01.2021 at 1730 hours, near Otaq of Nabi Bux Mangrio situated in village Nabi Bux Mangio the present applicants/accused along with co-accused Fateh Muhammad, SAifal, Bangul Khan, Ameer, Bashir, Sher Muhammad, Abdul Hameed, Qalandar Bux, Noor Muhammad alias Zulfiqar and one unknown accused in furtherance of their common object, duly armed with deadly weapons, due to dispute over landed property, committed order of complainant's son namely, Zamir by firing upon him and also caused fire arm injuries to Qalandar Bux and run away while making aerial firing. It is further alleged that in the said incident the companion of the accused party, namely, Noor Muhammad alias Zulfiqar also murdered.

3. Learned Counsel for applicant has mainly contended that the applicants are innocent and have falsely been implicated in this case. That there is counter-version of the alleged incident and that was

admitted by the accused party vide Crl. Miscellaneous application No.Nil of 2021 filed u/s 22-A & 22-B Cr.P.C but the same was allowed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Kandiaro vide order dated 18.03.2021; however, said order was impugned by one Muhammad Bux Mari vide Crl. Misc. application No.S-179 that was allowed by this Court vide order dated 21.06.2021 by setting-aside the order dated 18.03.2021 passed by Ex-Officio Justice of Peace. That, there is another FIR of same incident lodged by complainant Muhammad Bachal bearing No.12/2021 of same incident regarding death of deceased Imran wherein names of present applicants are not appearing. That though the recovery of DBBL gun and 44 rifle has been shown from the present applicants with positive FSL report however, fact cannot be oversight that the accused persons were arrested on 15.02.2021 and the recovery was shown effected on their pointation on 18.02.2021 and the alleged recovered weapons were sent to FSL on 24.02.2021 with delay of six(06) days. That except presence and making aerial firing no overt role has been assigned to present applicant hence, their case squarely find within the ambit of further inquiry. In support of his contention he has relied upon case of **1. Shahid Hussain alias Multani v. The State and others (2011 SCMR 1673)**, **2. Manzoor Hussain and another v. The State (2011 SCMR 902)**, **3. Muhammad Ali v. The State (2008 P.Cr.LJ 87)**, **4. Syed Khalid Hussain Shah v. The State and another (2014 SCMR 12)**.

4. On the other hand learned Counsel for complainant while opposing the instant Crl. Bail application vehemently has argued that both the applicants are nominated in the FIR with specific role of making aerial firing and since they shared common intention they are not entitled for the concession of bail. He also contended that there is positive report of FSL regarding alleged weapons used by the applicants to commit the alleged offence. In support of his contentions he has relied upon cases of **1. Rabnawaz and 2 others v. The State (2015 P.Cr.LJ 1531)**, **2. Muhammad Rafique and 4 others The State through Advocate General (2008 P.Cr.LJ 1201)** and **3. Mst. Shafeen Akhtar v. Malik Mumraiz and others (2014 P.Cr.LJ 1415)**.

5. Learned Additional Prosecutor General while adopting the arguments of learned Counsel for complainant has also opposing grant of bail to present applicants.

6. Heard learned counsel for parties and perused the material available on record. It appears that present applicants were arrested on 15.02.2021 and since then they are confined in the Judicial custody. Police has submitted the challan hence, they are no more required for further inquiry. It further appears that regarding same incident two FIRs have been registered i.e. present one being Crime No.11/2021 and other being Crime No.12 of 2021. In Crime No.11 of 2021, the presence of applicants have been shown at the occurrence with role of causing aerial firing while another FIR being Crime No.12/2021 their presence has not been shown. It is also an admitted position that except making aerial firing no overt act has been assigned to the present applicants. Though as per prosecution the weapons allegedly used by the applicants have been recovered on their pointation after three days of their arrest, yet the fact that same was sent to the ballistic expert as delay of six(6) days cannot be ignored hence, vicarious liability of the applicants is to be determined at trial. The case of applicants squarely falls within the ambit of further inquiry entitling them for the grant of bail. Accordingly, I allow this application. The applicants are released on bail subject to their furnishing solvent surety in the sum of Rs.200,000/- each (Rupees Two lacs) and PR bond in the like amount to the satisfaction of learned trial Court.

Application stands disposed of.

**JUDGE**

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