

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARAKHA

Cr. Bail Appn. No.B.47 of 2024

Cr. Bail Appn. No.B.64 of 2024

DATE
OF HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

10.03.2024

1. For orders on office objection 'W'
2. For hearing of bail application.

Mr. Ahmed Bus Abro, advocate for applicants in both matters, along with applicants (on bail) in Cr. Bail Appn. No.B.47/2024

M/s Ashique Ali Jatoi & Naseer Ahmed Wagyan, advocates along with complainant in both matters.

Mr. Ali Anwar Kandho, Addl. P. G.

ORDER:

MUHAMAD BALEEM JESSAR J. These bail applications have been directed against the common order dated 22.01.2024, passed by Sessions Judge, Kamber Bhahdadkot @ Kamber, vide Cr. Bail Appn. Nos.17 of 2023, 37 of 2023 & 76 of 2023, whereby pre-arrest bail applications filed by the applicants Baddam Hussain, Abid Hussain & Amjad were rejected and also application filed by Arshad Hussain under section 497, Cr.P.C has been dismissed.

2. Per prosecution case, the applicant Abid Hussain fired a pistol shot to injured PW Khaleel Ahmed son of complainant which landed at his thigh of left leg, whereas, applicant Arshad Hussain allegedly caused pistol butt to the injured PW Khaleel Ahmed on his head, whereas, role assigned to applicants Baddam Hussain and Amjad is nothing but mere their presence.

3. Learned counsel for the applicants submit that the applicant Abid Hussain who allegedly fired upon injured PW Khaleel Ahmed on his left leg was let off by the police and his name under column No.2 of the challan. As far as injury allegedly attributed

to applicant Arshad Hussain is concerned, said injury allegedly sustained by PW Khaleel Ahmed on his head has been opined by the Medico Legal Officer to be Shajjah-i-Khaifsa falling under section 337-A(i), PPC and is bailable, hence prays for grant of bail applications. In support of his contention, he places his reliance upon the cases of **MUHAMMAD UMAR v. THE STATE and another (PLD 2004 Supreme Court 477)** and case of **JAMALUDDIN and another v. The STATE (2002 SCMR 1243)**.

4. Mr. Ali Anwar Kandho, learned Addl. P. G submits that though the applicants are nominated in the FIR; however, the accused Abid Hussain against whom specific role of causing firearm injury to injured PW Khaleel Ahmed is assigned was let off by the police during investigation whereas applicant Arshad Hussain has been assigned role of causing butt blow to injured PW on his head and such injury has been described by the Medico Legal Officer to be bailable. As far as remaining two accused namely, Saddam Hussain and Amjad are concerned, have been assigned no role hence he has no objection to grant of bail application(s).

5. M/s Ashique Ali Jatoi and Nascer Ahmed Waggan, counsels for complainant oppose the bail applications on the ground that applicants are nominated in the FIR; besides the specific role of causing injuries to injured have been assigned to them therefore they are not entitled for bail.

6. I have heard learned counsel for the parties, learned Additional P. G appearing for the State and perused the material made available before me on record.

7. No doubt the applicant Abid Hussain is nominated in the FIR and he allegedly fired upon injured PW Khaleel Ahmed who landed at thigh of his left leg; however, no fracture was caused.

police during investigation have let off the applicant Abid Hussain by placing his name under column No.2 of the challan and later he was joined by the Magistrate concerned. As far as role attributed to applicant Arshad Hussain is concerned, he allegedly caused pistol butt blow to injured PW Khaleel Ahmed on his head. The injury attributed to applicant Arshad Hussain has been declared by the Medico Legal Officer to be Shajjah-i-Khafifah punishable under section 337-A(j), PPC, which is bailable. As far as applicant Saddam Hussain and Amjad Ali are concerned, mere their presence has been shown and no specific role or overt act is assigned against both of the accused. Per FIR, though the complainant party was empty handed and under the complete mercy of the accused; however, none of the accused had repeated firearm injury through which it could be deduced that they had any wrong intention to cause their *Qatl-i-Amd*. In such eventuality, the accusation against the applicants is yet to be determined by the trial Court after recording pro and contra evidence of the prosecution. In view of dicta laid down by the learned Apex Court in case of *KHALIL AHMED SOOMRO and others v. THE STATE (PLD 2017 Supreme Court 730)*, the case against the applicants requires further enquiry. Consequently, instant bail application is hereby allowed. Ad-interim pre arrest bail granted to applicants Saddam Hussain, Abid Hussain and Amjad Ali, vide order dated 25.01.2024 is hereby confirmed on the same terms and conditions.

8. Since the applicant Arshad Hussain Gopang has assigned simple injury to injured PW Khaleel Ahmed, which is bailable. In the light of dicta laid down by Hon'ble Supreme Court of Pakistan in case of *Muhammad Tanveer v. The State (PLD 2017 SC 733)*, the case against applicant Arshad Hussain is also covered by sub-section (2) of Section 497, Cr.P.C. Consequently, Crl. Bail Appln. No.S-64 of 2024 is also hereby allowed. The applicant Arshad Hussain shall be released on

and subject to the following terms and conditions of the lease of the building
and property in the use subject to the reservation of the building.

bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of the trial Court.

Judge

M.Y.Panhwar/**