



Ghulam Akbar caused gunshot injuries to Abdullah; accused Gulzar caused rifle shot injury on his head, Karim Bux caused rifle shot over his Eye brow; accused Fazal Muhammad caused rifle shot which hit him on his abdomen; accused Abdullah fired Pistol shot which hit him on his right arm wrist; accused Azam fired gunshot which hit on his right wrist; accused Abdul Hameed fired gunshot which hit his nephew Illumuddin; similarly accused Muhammad Yakoob fired rifle shot which hit on his forehead; accused Hashim fired gunshot which hit him (complainant) on his left arm near elbow. Thereafter accused, while, making aerial firing went away towards southern side; F.I.R was registered at Police Station. The injured Abdullah and Illumuddin succumbed to injuries, whereas two other persons also received injuries; after usual investigation the case was challaned.

03. It is further revealed that applicant/accused Gulzar filed bail application before this Court, same was withdrawn on 19.12.2011 with directions for recording the evidence of Medical Officer, after examination of Medical Officer, bail application was again preferred before trial court, but same was declined.

04. Counsel for applicant/accused, inter-alia, contends that on almost same allegations the co-accused Azam, Imdad, Fazal Muhammad, Hashim, Ghulam Akber, Nizamuddin, Sultan, Ali Khan and Bakhshan were found innocent by the Investigating Agency and their names were placed in column No.2, thus this aspect is sufficient to grant bail to the present applicants/accused as the instant case falls within the scope of further inquiry; according to allegations accused Gulzar and Ali Akber is alleged to have caused injuries to deceased Abdullah, but medical evidence reflects that exit wound of both injuries is same, therefore, this is a case of conflict in medical and ocular evidence, as such benefit can be extended to the applicant/accused at this stage; accused

are behind the bars since more than 02 years, therefore, they have also statutory right as provided U/s 497, Cr.P.C, when delay regarding conclusion of trial is not on the part of the applicants/accused. He has relied upon 2012 SCMR 354, 1985 SCMR 1509, 2012 Y L R 477, 2007 SCMR 1982, 2012 Y L R 1496, 2003 M L D 90, 2008 Y L R 2809, 1985 SCMR 565, 1999 P. Cr.L.J 1460.

05. Counsel for complainant, while refuting the contentions of learned counsel for the applicants/accused, argued that F.I.R was lodged promptly; names of all three applicants are surfaced in the F.I.R with specific role, as they have caused fatal firearm injuries to deceased Abdullah and Illumuddin; this is a case in which two persons have lost their lives and also two persons have received firearm injuries; police report regarding the co-accused persons is not binding upon the court and he has relied upon 1988 SCMR 281, 1996 SCMR 555, 2009 Y L R 1144, 1992 SCMR 501, 1996 SCMR 958, 2003 SCMR 64.

06. Learned A.P.G contends that the applicants are not entitled for bail and delay is not on the part of the prosecution as on some dates the witnesses were present but some accused persons sought time, conflict in medical evidence and ocular version cannot be entertained at bail stage. In support of his contentions he has relied upon 2012 SCMR 856, 2006 M L D 1905.

07. Heard counsels and perused record.

08. The learned counsels for the respective parties have relied upon a plethora of cases. It is settled principle of law that in criminal cases, each case has to be decided on its' own peculiar circumstances, though, principles laid down in various precedents have binding effect but it cannot be applied in stricto sensu, however, keeping in view the

said principles and careful consideration and meticulous examination of available record, it is manifest that names of all the three applicants/accused transpire in promptly lodged F.I.R with specific role that they had caused fatal blows to Abdullah and Illumuddin both lost their lives. Admittedly in F.I.R and statements U/s 161, Cr.P.C applicants are alleged to have caused firearm injuries and post-mortem report also reveals that both deceased have received firearm injuries, therefore, it is apparent that there is no contradiction in medical and ocular evidence regarding the weapons used by the applicants and injuries received by the deceased persons and with regard to the plea of applicants counsel that according to Medical Officer the exit wound of two injuries is same, therefore, this contradiction is sufficient to bring the case of applicants within scope of further inquiry; on this proposition I am not in agreement with learned counsel for the applicants/accused and in my considered view this aspect requires deeper appreciation of evidence which is not permissible at bail stage; as regard to the plea that some co-accused persons were found innocent by the police on this count it is settled principle of law that police report is **ipsi dixit**, not binding upon the court, though it can be considered with other material but this cannot be taken sole ground for grant of bail.

09. As far statutory ground, it is manifest that charge is framed in the instant case but the trial is still not concluded, due to some adjournments sought by the accused and on some by the complainant side, thus, it is evident that delay in conclusion of trial is on the part of accused, moreover mathematical calculation cannot be applied while deciding the bail application on statutory ground.

10. In view of above, both the instant bail applications are dismissed with direction to the trial court to conclude the trial within three months with compliance report. In case of failure, the applicants/accused will be at liberty repeat their bail applications on the ground of statutory delay as well as fresh grounds.

The bail applications stand disposed of along with the listed application.

JUDGE

A.R.BROHI