

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Criminal Bail Application No.D-10 of 2014**

Before:

**Mr. Justice Salahuddin Panhwar &  
Mr. Justice Muhammad Iqbal Kalhoro**

Ghulam Muhammad and others..... Applicants.

Versus

The State..... Respondent.

Date of hearing : 30.12.2014.

Date of Decision : 30.12.2014.

Applicants : Through Meer Ahmed Mangrio advocate.

Respondent : The State through Mr. Shahid Ahmed  
Shaikh A.P.G. Sindh.

**ORDER**

**MUHAMMAD IQBAL KALHORO, J:** - The applicants namely, Ghulam Muhammad, Taj Muhammad, Abdul Nabi and Ghulam Nabi after dismissal of their bail application by the learned trial Court vide order dated: 10-01-2014 in respect of Crime No.45/2013 of PS Jhangara, under section 365-A PPC, have filed the instant bail application under section 497 Cr.P.C. seeking their release on bail.

2. The brief facts narrated by the complainant in the FIR are that on 03-10-2013, he, his brother Munwar Ali, his relatives Ali Gohar and Muhammad Ibrahim with other family members were present in his house, when at about 06-00 pm. accused Ghulam Muhammad armed with gun, Ghulam Nabi having a pistol, Ismail having a gun Liyar armed with a pistol, Abdul Nabi armed with a pistol, Ali Dost; and Taj Muhammad having a pistol along with three un-known persons who were also duly armed with pistols trespassed in his house and started abusing the complainant party. Accused Ghulam Muhammad by pointing his gun to the complainant party asked them to keep quiet, meanwhile, accused Taj Muhammad and Abdul Nabi dragged his brother Munwar Ali out of his house and the accused Ghulam Muhammad told the complainant party that they should pay Rs.500,000/- within two days, else, Munwar Ali would be murdered. Then all the accused within the sight of complainant party went away towards western side on two cars and one motorcycle. The complainant later on filed an application before the learned Additional Sessions Judge, Sehwan for registration of an FIR against the accused and after obtaining such order he got the FIR registered to the above effect.

3. Learned counsel for the applicants contended that a false case was registered against the applicants by the complainant due to the previous enmity; the applicants were innocent and had not committed the alleged offence; prior to the registration of FIR in hand, the applicant Taj Muhammad had got registered an FIR bearing crime No.103 / 2013 of PS Sehwan under section 302, 34, 147, 148, 149, 504 and 114 PPC against

the complainant party for committing murder of Muhammad Ali, son of accused Ghulam Nabi and in order to take the revenge, the present case was registered with a false story of abduction by the complainant party against the applicants. According to learned counsel, one Mst. Gul Bano daughter of Ali Muhammad had contracted marriage with Ahmed Ali son of applicant Ghulam Nabi against the wishes of her parents which caused annoyance to the complainant party being closely related to her, therefore, initially in vengeance they committed the murder of Muhammad Ali who was brother of Ahmed Ali son of applicant Ghulam Nabi and then had contrived a false story of abduction of Munwar Ali to save themselves from the repercussions of murder and to put pressure on the applicants to come to terms with them. Learned counsel also drew our attention to the affidavits submitted by the complainant, abductee and witnesses of the case raising no objection to the grant of bail to the applicants and also emphasized over the delay of nine days in the registration of FIR against the applicants which according to him was not satisfactorily explained and had made the case against the applicants to be one of further inquiry. He lastly prayed for release of the applicants on bail.

4. Conversely, learned A.P.G. for the State opposed the grant of bail to the applicants by arguing that the applicants were specifically nominated in the FIR and the abductee after his release had supported the case against the applicants in his statement recorded under section 161 as well as 164 Cr.P.C. He further contended that offence alleged against the applicants being non-compoundable, the filing of the affidavits by the

complainant raising no objection to the grant of bail to the applicants had no value in the eyes of law and could not be considered.

5. We have given due consideration to the arguments advanced by the learned counsel and perused the material available on the record.

6. As per prosecution story, the applicants abducted the brother of the complainant namely Munwar Ali who later on was recovered by the police vide memo of recovery dated 19-10-2013 in an injured condition. However, the record is silent in respect of the fact that at the time of recovery whether any applicant was seen around such place or not and no evidence has been brought forwarded by the prosecution that the abductee was left there by the applicants to establish prima facie the nexus of applicants with the commission of offence. The facts alleged in the prosecution case and the recovery of the abductee, when seen in juxtaposition with the enmity going on between the parties would make the case against the accused to be one of further inquiry. Going by the record, it would be evident that one Mst. Gul Bano by case Nohani had filed a Constitutional Petition No.D-2236 of 2012, the son of applicant Ghulam Nabi namely, Ahmed Ali, being co-petitioner, wherein she had arrayed the complainant namely, Ali Anwar as respondent No.17. The said constitutional petition was filed for the quashment of an FIR bearing crime No.209 / 2013 lodged at PS Kotri for the offence under section 504, 506 (2), 147, 148 and 149 PPC registered against the accused party by the complainant party. Besides, the prayer for quashment of above FIR, the request was also made for quashing several other FIRs registered against the accused by the complainant party. Registration of the FIR bearing

crime No.103 / 2013 lodged at PS Sehwan under section, *inter alia*, 302 PPC for allegedly committing murder of Muhammad Ali son of applicant Ghulam Nabi against, among others, the father and brother of the present complainant namely, Pathan and Asghar nominated as accused and the constitutional petition filed by Mst. Gul Bano and Ahmed Ali against the complainant party speak of a running enmity between the parties. Seen in that context, the possibility of falsely implicating the applicants cannot be altogether ruled out. The incident alleged in the FIR occurred on 03-10-2013, whereas the FIR was registered on 12-10-2013 after the delay of almost nine days which does not appear to be properly explained by the complainant. We are conscious of the fact that delay *per se* is no ground for granting bail to the accused; however, at the same time in the backdrop of an enmity going on between the parties, such delay in registration of FIR cannot be completely ignored. The abductee was allegedly recovered on 19-10-2013 in an injured condition without there being any applicant seen closely around or near to him by any of the witnesses. The alleged injuries sustained by the abductee on his lower part of the body viz. his legs have been opined by the medico legal officer as *ghayar-e-jaifah* falling within the mischief of offence under section 337-F(i) PPC, which is bailable. *Ex facie* the mystery of leaving the abductee behind without achieving the alleged object by the applicants also does not stand explained properly by the prosecution. After the arrest of the applicants, admittedly, no any incriminating article viz. weapon was recovered from them. Therefore, *prima facie*, there is no supporting evidence connecting the applicants with the injuries sustained by the abductee.

7. As regards the affidavits filed by the complainant, abductee and witnesses raising no objection to the grant of bail to the applicants, we find ourselves in agreement with the contention advanced by the learned A.P.G. for the State that the offence being non-compoundable, such affidavits have no bearing over the merits of the case and cannot be legally considered. More so, the practice of filing affidavits by the witnesses taking U-turn on the case earlier set up by them cannot be appreciated in view of the dictum laid down by the Honorable Supreme Court in a case of Naseer Ahmed (PLD 1997 SC 347).

8. Having discussed above, we have come to a view that applicants have been able to make out a case for grant of bail, resultantly the application is allowed and the applicants are granted bail, subject to their furnishing surety in the sum of Rs.100,000/- (One Lac) each and PR bond in the like amount, to the satisfaction of trial Court. Above are the reasons for our short order dated 30-12-2014.

9. Needless to state that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party before the trial Court.

Criminal bail application stands disposed of.

**JUDGE**

**JUDGE**

A.C