

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No.S- 482 of 2014.

Date Order with signature of judge.

1.For orders on M.A No.1447/2015.
3.For Hearing.

04.05.2015.

Mr.Rafique Ahmed K. Abro, advocate for the applicant.

Mr. Muneer Ahmed Abbasi, DDPP for the State

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NAZAR AKBAR-J:- Through this application applicant Abdul Waheed Detho has sought post arrest bail in Crime No.74 of 2014 of P.S Rehmatpur registered for an offence U/S 324, 34 PPC.

Brief facts of the prosecution case are that on 17.07.2014 complainant Dr.Khaleeque Rehman Soomro alongwith his brothers namely Abdul Hafeez and Atiq Rehman was available at his private clinic at Nazar Muhalla Larkana when at about 1230 hours present applicant/accused Abdul Waheed came there and asked the complainant to treat his ladies on which complainant inside ladies portion of clinic where he saw one unknown accused having loaded pistol in his hands on he tried to rush back but accused Abdul Waheed grappled him and the unknown accused made straight pistol fire upon complainant which hit him at right side temporal region crossing nearby his eye and the same fire shot also hit to accused Abdul Waheed. On fire report, complainant's brothers also came inside ladies portion who saw the accused and then accused persons made their escape good. Complainant after getting X-ray approached the P.S and lodged FIR to the above effect.

After registration of FIR, the investigation followed and in due course the present applicant/accused was arrested on 19.07.2014 and sent up to stand trial giving rise to filing of instant bail application.

I have heard learned counsel for the parties and perused the material brought on record.

It is mainly contended by learned counsel for the applicant that case against the present applicant is false, fabricated and engineered one; there is inordinate delay of about two and half hours in lodgment of FIR while distance between P.S and place of wardat is only 1 k.m, for which no plausible explanation has been furnished; the only allegation against the present applicant is that he grappled with the complainant when unknown co-accused allegedly fired straight at him hitting on his right temporal region. He contended that in fact present applicant being patient had gone to clinic to get treatment when unknown accused fired at doctor which also hit him and he being injured to P.S to lodge FIR but rather police falsely implicated the present applicant in this case. He further contended that admittedly all the prosecution witnesses are closely related interse thus they are inimical, partisan and hostile therefore, their testimony can not be taken as gospel truth and veracity of prosecution evidence could be determined after recording of their statement. Learned counsel pointed out that there is no mention in the FIR that whether the present applicant was armed with any weapon. He further contended that co-accused Bakhat Ali having been assigned active role of firing has been granted bail by learned Sessions Judge, Larkana on 03.10.2014 while the case of present applicant is rather on better footings who has been assigned only role of grappling with the complainant. On all these scores, learned counsel for the applicant claimed that the prosecution case is highly doubtful and calls for further inquiry.

Learned DDPP appearing on behalf of the State has supported the impugned order and opposed the grant of bail on the ground that the applicant was named in the FIR with specific role of grappling with complainant whereby he facilitated the co-accused who caused firearm injury on his temporal region.

I have considered the arguments advanced by the learned counsel and examined the record available on file. Even in the present FIR, it has been mentioned accused was injured by the same bullet which hit the victim/complainant from the fire of unknown accused. Admittedly it was a small clinic in which

complainant and his two brothers were also available and as per FIR at least, at the time of incident present accused was not armed with any weapon as in the FIR it has not been mentioned that the applicant/accused was also armed but still he was not apprehended by the complainant party. Learned counsel for the applicant has relied on case of Tahir Abbas v. The State and another (2014 YLR 1242) which fully covers the case of present applicant/accused. The relevant part of case law is as follows:

4. I have heard the learned counsel for the petitioner, the learned Deputy Prosecutor-General and the learned counsel for the complainant and have also gone through the record of this case with their able assistance. It has been noticed by this Court that although the petitioner is named in the FIR but the facts remains that no injury to the deceased is attributed to him; the only allegation of catching hold of the deceased is attributed to the petitioner whereas his co-accused fired shots on the deceased with his pistol and caused fatal injury; it does not appeal to prudent mind that a person would catch hold of deceased when his co-accused was inflicting fire shot injuries to deceased and is also putting his own life at stake; such type of allegations are very easy to level but very difficult to prove; admittedly the petitioner remained on physical remand but nothing was recovered from him; during investigation it has come on record that he was merely present at the place of occurrence; it is settled law that vicarious liability of the accused is to be determined by the learned trial Court after recording evidence; investigation of the case is complete and he is no more required for further investigation; no useful purpose would be served by keeping him behind the bars; mere commencement of trial is no ground to refuse bail if otherwise the accused becomes entitled to bail; reliance can be placed upon 2013 SCMR 49 he is behind the bars since 16.12.2012.

The position in the present case as argued by the learned counsel for the applicant is on better footings. Since the accused, who was charged with causing firearm injury after arrest has not been properly investigated by the prosecution so much so he was easily granted bail which shows that the prosecution is not conducting the investigation with due diligence. Since, the main accused who has been alleged for causing injury to the complainant has been granted bail, no matter on whatever ground, the case of present accused definitely calls for further inquiry. Since he has

himself been injured by the same bullet which hit the complainant on his face.

In these circumstances, keeping in view the case law relied upon by the learned counsel for the applicant, bail is granted to the applicant subject to furnishing solvent surety in the sum of Rs.300,000/= and P.R bond in the like amount to the satisfaction of trial Court.

The application stands disposed of.

JUDGE