

ORDER SHEET

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

Crl. Bail Appln. No. S- 439 of 2014.

Date	Order with signature of judge.
<u>04.05.2015.</u>	<u>1. For orders on office objection as flag A. 2. For Hearing.</u>

Mr. Habibullah Ghouri, Advocate for applicant.

Mr. Suhendar Kumar, Advocate for complainant.

Mr. Muneer Ahmed Abbasi, D.D.P.P.

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NAZAR AKBAR, J: Applicant/accused Deedar Ali Mugheri seeks post arrest bail in Crime No.126/2010, registered under Sections 302, 34 P.P.C, at Police Station Kamber.

The case of prosecution in brief is that on 26.4.2010, the complainant Fayaz Hussain alongwith his brothers, namely, Imtiaz Ali, Saeed Ali and their uncle Wazir Ali alias Sultan Ahmed were available in their Otaq, when at about 7.15 p.m. one Ahmed Bux Metlo informed them over phone that three culprits after committing robbery of his motorcycle and causing injuries to his uncle have proceeded towards the village of complainant. Therefore, the complainant party came out of their Otaq and after fifteen minutes they saw three persons riding on motorcycle coming towards them and as they attempted to apprehend them, one of the culprits fired Kalashnikov shot at Imtiaz Ali who raised cry and fell down, whereas the culprits decamped. The complainant party shifted the injured Imtiaz Ali to hospital but he succumbed to his injuries on the way. Therefore, FIR was lodged against three

unidentified accused and since we have carefully seen these culprits, we will be able to recognize them if seen again.

Learned counsel for the applicant mainly contended that name of the applicant does not find place in the F.I.R and no specific role of firing is assigned to him in the F.I.R. The applicant was implicated in the case after twelve days on the basis of statements of prosecution witnesses recorded under Section 161 Cr.P.C. Learned counsel further contended that, no identification parade was held before any Magistrate; so also there is no recovery of any incriminating article from the possession of the applicant.

Learned D.D.P.P assisted by learned counsel for the complainant has opposed the grant of bail to the applicant, on the ground that the accused/applicant was named by the P.Ws and he remained fugitive from law and that is sufficient material to connect him with the crime.

I have heard learned counsel and perused police papers.

The complainant party lodged a blind FIR on 26.04.2010 and the record shows that the complainant made a further statement before the Court on the next day and he even in the further statement he did not nominate any accused. The police without any justification recorded 161 Cr.P.C statement of complainant and P.Ws after delay of 12 days on 08.05.2010 and for the first time in 161 Cr.P.C statement the complainant nominated the applicant. Learned counsel for applicant contended that the delay in nominating accused after 12 days by name in 161 Cr.P.C statement is by itself sufficient to hold that it is a case of further

inquiry. The other ground taken by learned counsel for the applicant is that the story in the FIR begins from phone call received by the complainant from his friend Ahmed Bux Metlo that the applicant and two others robbed him of his motorcycle and after causing injuries they had proceeded towards the Otaq of the complainant. Ahmed Bux Metlo has also lodged FIR of the incident bearing Crime No.125 of 2010 of P.S Kamber. Applicant has been acquitted in the case arisen out of Crime No.125 of 2010 of P.S Kamber. Neither motorcycle was recovered nor any weapon, used in the offence, has been recovered from the accused till today therefore, it makes a further case of further inquiry that whether accused is really one and the same person about whom Ahmed Bux Metlo had informed the complainant of FIR No.125 of 2010 of P.S Kamber to the complainant herein. Challan has already been submitted.

The counsel for the applicant denied and disputed the contention of the prosecution that the applicant was absconding. He asserts that the applicant has been attending the Sessions Case No.193 of 2010 in Crime No.125 of 2010. Therefore, instead of showing him absconder police should have attempted to arrest him in this case. Learned counsel in rebuttal to the arguments of prosecution and complainant has relied on case of Ikram ul Haq v. Raja Naveed Sabir and others (2012 SCMR 1275) and Abid Ali alias Ali v. The State (2011 SCMR 161). In both citations the honourable Supreme Court has granted bail to the accused charged U/S 302, 324 PPC on the ground that once a case of further inquiry is made out the accused are entitled to bail as matter of right and even any absconsion has no adverse effect on such right for release of applicant on bail. In the case of Ikram ul Haq v. Raja

Naveed Sabir and others (Supra), the honourable Supreme Court held as under:

“It has vehemently been argued by the learned counsel for the petitioner that respondent No.1 had remained a fugitive from law and had been declared a proclaimed offender and, thus, he was not entitled to be extended the concession of bail. We have, however, remained unable to subscribe to this submission of the learned counsel for the petitioner because the law is by now settled that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as a matter of right and not by way of grace or concession. Bail is sometimes refused to an accused person on account of his absconson but such refusal of bail proceeds primarily upon a question of propriety. It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail. A reference in this respect may be made to the cases of Ibrahim v. Hayat Gul and others (1985 SCMR 382), Muhammad Sadiq v. Sadiq and others (PLD 1985 sc 182) AND Qamar alias Mitho v. The State and toehrs (PLD 2012 SC 222).”

In the case of Abid Ali alias Ali v. The State (Supra), the honourable Supreme Court held as under:

“It is an admitted fact that name of the petitioner is not mentioned in the F.I.R but his name was included in the list of accused in supplementary statement. There is no explanation available in this regard, therefore, the case of the petitioner falls under the category of further inquiry, see Tahir Abbas v. The state (2003 SCMR 426). Although the challan has been submitted in the Court and the case was fixed for hearing but still prima facie the case of the petitioner appears to be one of further inquiry and is covered under provisions of section 497, Cr.P.C, then it becomes a right of accused that he be released on bail and practice of refusal in such cases where challan is submitted should not be bar to refuse a right. See Muhammad Ismail v. Muhammad Rafique and another (PLD 1989 SC 585). It is also settled principle of law that observations made by superior courts dealing with the bail matter are always tentative in nature.”

In the case in hand, the applicant has made out a case of further evidence on two grounds. Firstly the complainant and his witnesses failed to name the accused in the FIR and in the further

statement made by the complainant on the next day of lodging of the FIR then how they came to know about the names of accused after twelve days. Secondly this Court can not ignore the fact that accused who were charged in a sequence of offence resulting in two consecutive FIRs bearing Crime No.125 of 2010 and 126 of 2010, the accused have already been acquitted in one of them i.e. Crime No.125 of 2010 in which they were charged with an offence of causing firearm injuries to Irshad Ali and robbery of motorcycle, and the story in the FIR No.126 of 2010 starts by referring to the incident reported in Crime No.125 of 2010 of same police station, therefore, even if I accept the argument of learned counsel for complainant that acquittal was an outcome of compromise outside the Court in Crime NO.125 of 2010 it would still be a case of further inquiry into the guilt of the applicant/accused.

In view of above facts, while relying on above referred judgment of honourable Supreme Court, I am of humble opinion the accused/applicant had made out a case for bail and he was admitted on bail by short order dated 04.05.2015 and these are the reasons of the same.

JUDGE

shabir

