

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr. Bail A. No.S-940 of 2014.

Date of hearing and decision: 16-09-2015.

Mr. Shafi Muhammad Memon, Advocate for the applicants.

Mr. Shahid Ahmed Shaikh, A.P.G.

NAZAR AKBAR, J: - Through the instant application, applicants Kamal and Hub Ali seek post-arrest bail in Crime No.14/2014, registered with Police Station Tando Rahim Khan, under sections 302, 324, 114, 147, 148, 149 and 504 PPC.

2. Brief facts of the case are that on 17.06.2014 complainant Muhammad Bux appeared at Police Station and narrated that there was dispute with accused on taking water from Well, as such it is alleged that on 16.06.2014, and at about 06.30 a.m. accused Gulab armed with gun and Rehamatullah alias Jumo abused him and stated that you were prevented but in spite of that you came. It was about 06.30 a.m. when complainant heard some noise and saw accused Raheem armed with gun, Kamal (applicant), Ghulam, Noor Muhammad, Hub Ali (applicant), Ali Gul armed with Danda and Yousif armed with hatchet were present there. In the meanwhile complainant alongwith Ameer Bux, Wahid Bux and Sarang came running towards Well where accused Rahamatullah instigated the remaining accused as such accused Yousif caused blunt side of hatchet to Wahid Bux with intention to commit his murder, accused Gulab directly fired from gun on Wahid Bux which hit him. Accused Raheem directly fired on Sarang with intention to kill. Due to receiving of fire arm injuries Wahid Bux and Sarang fell down on earth. It is alleged that accused Kamal and Ghulam caused Danda

blows to Ameer Bux with intention to kill him, accused Rahamatullah, Hub Ali and Ali Gul caused Danda blows to Ghazi with the result Ameer Bux and Ghazi also fell down on earth. In the meanwhile co-villagers came there and the accused ran away. As a result of injuries, Wahid Bux died at the spot. Thereafter, complainant lodged the F.I.R.

3. Learned counsel for the applicants mainly contended that there is delay of one day in the lodging of F.I.R, which has not been explained plausibly; that as many as nine members of same family have been nominated in the present case due to enmity over taking water from Well; that the applicants have falsely been involved in the present case with malafide intention; that the allegation against the applicants is of causing simple injuries to P.Ws. Ameer Bux and Ghazi; that the medical evidence and ocular evidence are contradictory to each other; that the case of the applicants requires further inquiry as contemplated under section 497(2) Cr.P.C, that all P.Ws. are interested and no private and independent person has been cited as P.W. or mashir;

4. Learned A.P.G. opposed this bail application, amongst others, on the grounds that the applicants have committed a heinous offence; they have been nominated in the F.I.R. with specific role, therefore, they are not entitled for grant of bail.

5. I have given anxious consideration to the arguments advanced by the parties and perused the material available on record.

6. The record shows that the applicants have not caused any injury to deceased Wahid Bux and the only specific allegations against them, as per F.I.R, are that they have caused Danda blows to P.Ws. Ameer Bux and Ghazi; that per medical record, the injuries attributed to applicants are simple in nature; that in these circumstances the ingredients of section 324 PPC are not attracted,

hence the case of the applicants requires further inquiry; that background of strained relations between the parties is mentioned in the F.I.R; thus, a possibility regarding exaggeration by the complainant party cannot be ruled out; that as many as 09 accused persons are nominated in the F.I.R. and, per medical record, P.Ws. Ameer Bux and Ghazi have received only one injury each, therefore it is yet to be seen at trial as to which of the accused has caused those injuries; that the submission made by learned counsel for the applicants regarding malafide implication of the applicants in the present case appears to be an assertion which may not be without any foundation or substance.

7. In somewhat identical circumstances the Hon'ble Supreme Court in the case reported as **Muhammad Boota v. The State (2014 S C M R 1355)** has granted bail to the accused on the ground that accused had not caused any injury to deceased Mst. Sobia and the only specific allegation leveled against him in the F.I.R. was that he had given blows with the butt of his Kalashnikov to P.W. Hashim Ali.

8. In view of the above facts and circumstances and the law, the case of applicants appears to be one of further inquiry as envisaged under section 497(2) Cr.P.C. Resultantly, the bail application is allowed, the applicants may be enlarged on bail subject to furnishing solvent sureties each of Rs.1,00,000/- [Rupees One Lac only] each and PR bond in the like amount to the satisfaction of trial court.

9. The findings made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of the same while deciding the main case on merits.

JUDGE

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