

[Balochistan]

Before Muhammad Najam-ud-Din Mengal, J

ABDUL MALIK---Applicant

Versus

The STATE---Respondent

Criminal Bail Application No. 20 of 2025, decided on 13th February, 2025.

(a) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 302(b) & 34---Qatl-i-amd, common intention---Bail, grant of---Further inquiry---Accused was charged that he along with his co-accused committed murder of the two uncles of complainant--- Perusal of record revealed that though the applicant (accused) was nominated in the FIR, but the fact remained that no role of firing upon the deceased persons was attributed to him--- According to own case of the prosecution the absconding accused made firing upon the deceased persons, while only role of giving cover to the main accused persons was attributed to the applicant (accused)---First Information Report was also silent about whether at the relevant time the applicant (accused) was present at the site in armed condition or he was empty handed---Mere presence of an accused at the time of commission of crime was not enough to hold him responsible for commission of crime unless the prosecution succeeded in establishing that the applicant (accused) had also shared common intention or common object with his co-accomplices or helped or facilitated them in the crime---Being empty handed, the applicant (accused) could lend no help to his co-accused, rather he might have put himself in danger of being harmed by the other side, had there been any retaliation or counter-attack by them---Applicant (accused) was involved in the crime and in order to save his skin from legal consequences, he remained fugitive from law---However, bail could be granted, if the accused had good prima-facie case for bail on merits and mere absconsion would not come in the way of granting him bail---Question of what role had been played in the commission of crime would be ascertained after recording evidence from both the sides---Status of statements under S.161, Cr.P.C., recorded by the witnesses after considerable long delay, would also be determined at the time of delivering of final judgment, till then the case of the applicant fell within the ambit of further inquiry and he had succeeded in making out a case for grant of bail in his favour---Bail application was allowed, in circumstances.

Muhammad Khan alias Muhammad Bux v. The State 2015 PCr.LJ 69; Muhammad Tanveer v. The State 2014 PCr.LJ 1096; Qurban Ali v. The State 2017 SCMR 279; Tariq Zia v. The State 2003 SCMR 958; Ghulam Hyder v.

The State 2021 SCMR 1802 and Mitho Pitafi v. The State 2009 SCMR 299

rel.

(b) Criminal Procedure Code (V of 1898)---

----S. 497---Bail order---Observations of Court---Scope---Observations made in a bail order are tentative in nature and same should not influence the merits of the case. [p. 1033] D

T.H. Khan and Muhammad Riaz Hussain for Applicant.

Abdul Karim Malghani, State Counsel for the State.

Ahsan Rafiq Rana for the Complainant.

Date of hearing: 7th February, 2025.

JUDGMENT

MUHAMMAD NAJAM-UD-DIN MENGAL, J.---This order disposes of Criminal Bail Application No.20/2025 filed on behalf of applicant (accused) Abdul Malik Son of Muhammad Hashim, for grant of bail after arrest in FIR No.11 of 2021 dated 29th September 2021, at Levies Thana Kalat, under Sections 302, 34 P.P.C.

2. Facts of the case are that on 29th September 2021 at about 11.00 a.m. the complainant namely Akhtar Muhammad lodged the above FIR with the averments that on 29th September 2021 his two uncles namely Muhammad Azum and Khuda Dost went to Zehri in their Alto vehicle from Mangocher and at about 09.00 a.m. the accused Muhammad Anwar called him via phone that they have committed the murder of his both uncles, on such information he reached at Maliki area and came to know that the Levies party has shifted the dead bodies at Civil Hospital, Kalat. In the meanwhile, Muhammad Iqbal and Elahi Bakhsh told that accused persons namely Muhammad Anwar, Muhammad Yousaf, Abdul Malik applicant, Ghulam Ali along with two unknown accused persons after committing the crime at Ahmed Abad area escaped towards Yousafzai on three motorbikes.

3. After registration of FIR, the applicant (accused) remained absconder and has recently been arrested, who was subjected to investigation and on completion thereof, he was remanded to judicial custody and challan of the case was submitted in the trial Court ie. District and Sessions Judge, Kalat. In the meantime, the applicant (accused) filed an application for grant of bail, which was rejected vide order dated 8th January 2025. Whereafter, he filed the instant application before this Court.

4. Learned counsel for applicant (accused) contended that the applicant (accused) is innocent, has not committed any offence whatsoever alleged in the FIR rather he has falsely been involved and nominated in the FIR; that there exists old enmity in between the parties, due to which the applicant (accused) migrated to Dera Murad Jamali along with his family and that was the reasons the applicant (accused) had apprehension of his false implication, as such, immediately on the day of occurrence when he came to know about the occurrence, he immediately appeared before DIG Police Dera Murad Jamali and filed an application and the DIG also confirmed the presence of the applicant (accused) at Dera Murad Jamali, which area is otherwise is very far from the district Kalat; that even otherwise in the FIR only the presence of the applicant has been shown in the place of occurrence without his participation in the crime; that the absconsion of the applicant (accused) was neither intentional nor deliberate, but due to reasons of danger to his life on the hands on opponent party and due to fear the applicant (accused) could not approach the competent court of law; that the investigation in the matter is complete and the applicant (accused) is no more required for the purpose of investigation or probe, thus he is entitled for grant of bail in order to make his defence properly.

5. Learned State Counsel assisted by the learned counsel for the complainant stated that the applicant (accused) was nominated in the promptly lodged FIR with specific role of giving cover to the other accused persons; that the offences with which the applicant (accused) has been charged are non-bailable falling within the prohibitory clause of Section 497 Cr.P.C.; that after committing the crime the applicant (accused) remained fugitive from law and he has recently been arrested, thus if the applicant (accused) has been released on bail, there is an apprehension of his absconsion, hence prayed for rejection of bail application.

6. Heard the learned counsel for parties and perused the available record minutely. Perusal of record reveals that though the applicant (accused) was nominated in the FIR, but the fact remains that no role of firing upon the deceased persons was attributed to him. According to own case of the prosecution the absconding accused made firing upon the deceased persons, while the only role of giving cover to the main accused persons was attributed to the applicant (accused). The FIR is also silent to the effect that either at the relevant time the applicant (accused) was present at the site in armed condition or he was empty handed. It is well settled principle of law that mere presence of an accused at the time of commission of crime is not enough to hold him responsible for commission of

crime unless the prosecution succeeds in establishing that the applicant (accused) had also shared common intention or common object with his co-accomplices or helped or facilitated them in the crime. Being empty handed, the applicant (accused) could lend no help to his co-accused, rather he might have put himself in danger of being harmed by the other side, had there been any retaliation or counter-attack by them. Furthermore, it has been remained the consistent view of the superior Courts that whenever no overt act is ascribed to accused, lenient view is required to be taken towards the accused for granting him the concession of bail. Reliance in this regard is placed on the cases of Muhammad Khan alias Muhammad Bux v. The State, 2015 PCr.LJ 69, Muhammad Tanveer v. the State, 2014 PCr.LJ 1096, wherein the accused was granted bail, whose mere presence were also shown at the time of occurrence without their participation in the crime.

7. It has also been observed that in our tribal society there is a trend to implicate in a crime to several persons of the same family in order to blackmail and pressurize them. The applicant (accused) has taken the plea that much prior to commission of crime he along with his other family members migrated to Dera Murad Jamali and on the day of occurrence i.e. 29th September 2021 when he came to know about the occurrence and having apprehension of his false implication in the crime, he immediately appeared before the DIG Police Dera Murad Jamali through an application and the DIG has also confirmed his presence at Dera Murad Jamali and accordingly the Senior Superintendent of Police Naseerabad sent a letter No.1314-15 dated 4th September 2021 to the Superintendent of Police District Kalat, wherein the earlier has confirmed the presence of applicant at Dera Murad Jamali and submitting of application before it, which was sent to the latter for information and necessary action. Reliance in this regard is placed on the case of Qurban Ali v. The State 2017 SCMR 279, wherein the accused was granted bail on the ground that no role or overt act was attributed to him during the occurrence except the role of raising lalkara, while the allegation against the present applicant Abdul Malik is similar that at the time of committing crime he was covering the main accused persons, who committed the murder of deceased persons. In another case titled as, Tariq Zia v. The State 2003 SCMR 958 the Hon'ble Supreme Court has granted the concession of bail to accused on the ground that:

"---The contents of the FIR show that the accused was empty-handed and has not played any active/overt act in the commission of the offence.-

8. It is settled principle that mere presence of an accused at the time of commission of crime is not enough to hold him responsible for commission of the crime unless the prosecution succeeds in establishing that the accused had also shared common intention or common object with co-accused. In case Ghulam Hyder v. The State 2021 SCMR 1802 the Hon'ble Court held:

"3. Be that as it may, though named in the crime report alongside others of the same brotherhood, the petitioner is assigned role of a facilitator by holding the deceased alongside four others; the question is as to whether in the facts and circumstances of the case as alleged by the complainant himself, such facilitation was at all required, that too, without incurring fatal risk of being unintendedly hit by the shot in the darkness and as such petitioner's culpability requires further probe within the contemplation of subsection (2) of section 497 of the Code of Criminal Procedure, 1898, paving way for his release on bail, particularly when his continuous detention is serving no useful purpose. The petition is converted into appeal and allowed; the appellant is admitted to bail on his furnishing bond in the sum of Rs.500, 000/- with one surety in the like amount to the satisfaction of the learned trial Court."

9. In all the above referred cases, mere presence of accused was shown at the time of occurrence and no overt act or role was ascribed to him. The case of present applicant is similar to that of accused persons granted concession of bail in the above referred case.

10. Another ground agitated by the learned counsel for complainant and the learned State Counsel is that the applicant (accused) remained absconder for the period of more than four years, which is suggestive of the fact that the applicant (accused) was involved in the crime and in order to save his skin from legal consequences, he remained fugitive from law. Be that as it may, according to settled norms of justice bail could be granted, if the accused had good prima-facie case for bail on merits and mere his absconsion will not come in the way while

granting him bail. Although in the case in hand the applicant (accused) had remained a fugitive from the law and had been declared as proclaimed offender, but in a case calling for further inquiry into his guilt, he is entitled for grant of bail. Reliance in this regard is placed on the case of Mitho Pitafi v. the State, 2009 SCMR 299, wherein similar following view has been taken:

"It is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in way while granting the bail. We are, prima facie, of the view that the learned High Court has not appreciated the facts and circumstances of the case in its true perspective while declining bail to the petitioner."

The cases referred and relied upon by the learned counsel for complainant are distinguishable from the facts and circumstances of this case.

11. The tentative assessment of available record prim-facie reflects that what role has been played in the commission of crime is a fact, which will be ascertained after recording evidence from both the sides, and the status of statements under Section 161 Cr.P.C. recorded by the witnesses after considerable long delay, will also be determined at the time of delivering of final judgement, till then the case of present applicant falls within the ambit of further inquiry and the learned counsel for the applicant (accused) has succeeded in making out a case for grant of bail in favour of the applicant (accused).

12. In view of above, the instant application for grant of bail to accused Abdul Malik is accepted and he is ordered to be released on bail subject to furnishing bail bonds in the sum of Rs.500,000/- (Rupees Five Hundred Thousand) with two equivalent sureties of Rs.250,000/- (Rupees Two Hundred Fifty Thousand), with P.R. bonds of the like amount to the satisfaction of trial Court or Additional Registrar of this Court.

The observations made herein-above are tentative in nature, and the same shall not influence the merits of the case.

JK/43/Bal.4

Bail granted.