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PRESENTED

05-03-2018

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IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Misc..A.No.D- 187 of 2018

Pervaiz Ahmed s/o Karamullah Khan  
Chandio by caste, r/o Chandio House,  
Gul Colony, Taluka Mehar,.....Applicant/complainant

**VERSUS**

1. Sardar Khan

2. Burhan

both s/o Shabir Ahmed Khan, Chandio  
by caste, r/o Ghaibi Dero, District Kamber-Shadad Kot  
@ Kamber

3. The State.....Respondents

Offence u/s 302, 504, 109, 114, 148,149 PPC  
and 6/7 ATA, 1997,  
Crime No.20/2018, P.S A-Section Mehar

**APPLICATION U/S 497(5) CR.P.C**

It is prayed on behalf of the above named applicant/complainant that this Honourable Court may be pleased to cancel the pre-arrest bail granted to respondents/accused No.1 & 2 viz. Sardar Khan and Burhan Chandio, by learned Judge Anti-Terrorism Court, vide order dated 24.2.2018, on consideration of the following facts and grounds:-

**FACTS**

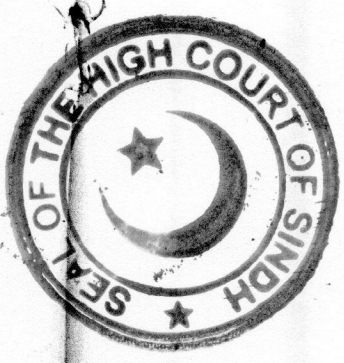
The FIR vide Crime No.20/2018 was lodged by applicant/complainant Pervaiz Ahmed Chandio at PS Mahar on 18.01.2018 at 01.00 a.m.



The contents of FIR are reproduced as under:-

“It is complained that I used to reside at above address. Mukhtiar Ahmed is my brother whereas Karamullah Khan Chandio is my father who was Chairman of UC Baledi. One Sardar Khan Chandio son of Shabir Ahmed Chandio since long used to issue threats to my brother Mukhtiar Ahmed Khan Tumandar in respect of his collusion against him with the help of other Tumandars. He asked him to stop or to face consequences along with Tumandar Counsel and other family members. Such threats were conveyed through different people at different times. Today on 17.01.2018 in the morning, I along with my father Karamullah Khan s/o Khasho Khan aged 65 years, brother Mukhtiar Ahmed Khan aged 45 years and my brother Qail Hussain aged 28 years member district council, cousin Aijaz Ahmed and Manzoor Ahmed s/o Gul Hassan Chandio were standing outside our Otaq situated at road leading from police station towards Fareedabad, when at 09.00 am two vehicles viz. one white Corolla Car No.BFZ-428 and another white Land Cruiser came and stopped, out of which six armed persons identified as 1) Ali Gohar s/o Bakhtiar @ Mukhtiar Chandio armed with K.K, r/o Soomer Teevino, 2) Ghulam Murtaza s/o Muhammad Saffar Chandio armed with repeater, r/o Islamabad Muhallah Mehar, 3) Sikander s/o Ali Hassan Chandio armed with repeater r/o Drib Kainchi, 4) Zulfiqar s/o Ghulam Qadir @ Qadu Chandio r/o Sadullah Chandio armed with repeater, 5) Ghulam Qadir @ Qadu s/o Paryal Chandio r/o Sadullah Chandio

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armed with repeater and one accused Burhan s/o Shabbir Ahmed Chandio was sitting on Land Cruiser and retracted down glass window of the car and instigated other accused that these people inspite of many warnings tried to insurrect against Sardar Khan therefore teach them a lesson and make example for others and kill them, on such instigation of Burhan Khan and at the instance of Sardar Khan the other accused opened the fires and created terror among the people and accused Ghulam Qadir @ Qadu made fire of his repeater upon father Karamullah which hit him on his belly. My father grappled accused Ghulam Qadir during which other accused viz. Ali Gohar with K.K and Ghulam Murtaza with repeater fired in order to rescue Ghulam Qadir and one K.K fire hit father Karamullah on right side of chest and other K.K and repeater fires hit Qadu and both of them fell down thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhriar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his K.K which also hit Mukhtiar Ahmed on his face and he fell down while screaming, thereafter accused Sikander fired directly with his repeater with intention to murder upon my brother Qabil Hussain which hit him on his right side buttock who also fell down while screaming. Thereafter all the accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western side. We then saw brother Mukhtiar Ahmed who sustained firearm injuries on



his face and chest and father Karamullah sustained firearm injuries on his belly and chest and brother Qabil Hussain sustained firearm injuries on his buttock whom we shifted to Taluka hospital Mehar where father Karamullah and brother Mukhtiar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. We after proceedings at hospital buried the dead bodies and in the evening received information regarding death of Qabil Hussain at Larkana whose dead body was shifted to Taluka hospital Mehar and after its postmortem I have come to report that above accused in collusion with each other duly armed spread panic and terror which firing indiscriminately at the instance of Sardar Khan and on the instigation of Burhan Khan have murdered my brother Mukhtiar and Qabil Hussain and father Karamullah and terrorized common men who shut their shops and ran away."

During investigation of the case, applicant/complainant Pervaiz Ahmed, and PWs Aijaz Ahmed and Manzoor Ahmed fully supported the case. Besides the medical evidence and circumstantial evidence corroborated the ocular version as given in FIR. The respondents/accused No.1 and 2 were specifically implicated as accused in the FIR as well as the statements u/s 161 Cr.P.C of the prosecution witnesses.

That the learned Judge Anti-Terrorism Court passed the impugned order dated 24.2.2018 hence, the present application is respectfully submitted before this court, on consideration of the following, amongst other grounds:-



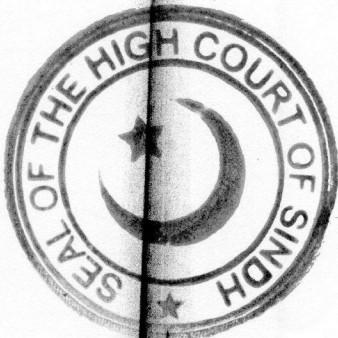
8/- That as per FIR accused Burhan was specifically named as accused, and he was clearly assigned the role of instigating the other accused that the complainant party had spread rebellion against Sardar Khan, and despite preventing them they did not stop their activities, as such the accused should give them such cruel treatment and finish them, which should be a terrible lesson for others; on such instigation of accused Burhan and on the abetment of accused Sardar Khan, the remaining accused persons made intense firing, thereby spreading terror among the general public, brutally murdered the complainant's father and two brothers.

9/- However, respondents No.1 and 2 are very influential persons, and they malafidely wielded influences for getting undue benefit in the case and for the ulterior purposes of spoiling the case of complainant/prosecution. Consequently the Investigating Officer malafidely submitted the report u/s 173 Cr.P.C, therein letting off respondent/accused No.1 Sardar Ahmed Khan u/s 497 Cr.P.C and respondent/accused No.2 Burhan Chandio u/s 169 Cr.P.C, and their names were placed in column-II of the challan. Such Report, to the extent of respondents/accused Sardar Khan and Burhan Chandio was malafide and unlawful, but the same was unjustifiably accepted by learned Judge ATC Naushahro Feroze.

10/- That it is strange that in the said order by learned Judge ATC on the Report u/s 173 Cr.P.C, the ocular evidence as given FIR along with medical and circumstantial evidence was not discussed; even the names of PWs Ajaz Ahmed and Manzoor Ahmed were not mentioned, nor their evidence was discussed in the Report.

11/- That furthermore, no cogent reasons were given in the said order, for not believing the prosecution evidence brought forth through the eye witnesses and discarding them.

12/- That the order dated 24.2.2018 passed by learned Judge ATC on the report u/s 173 Cr.P.C, without being based on cogent grounds



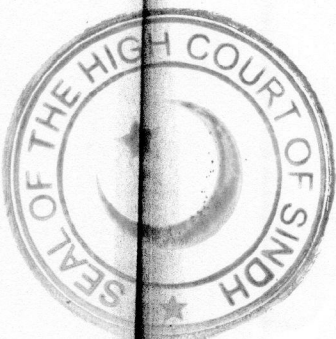
and being non speaking order, has already been assailed by applicant/complainant Pervaisz Ahmed by way of filing Criminal Misc. Application No.D-189/2018 before this Hon'ble Court

13/- That according to FIR, as specifically mentioned at various places, the accused persons deliberately committed the alleged offence in a brutal manner with the clear motive to spread terror, in order to coerce and intimidate the public/community of the entire area, and create the sense of fear among them, so that no person may dare raise his head in front of him.

14/- That it may be significant to note that prior to passing of the impugned order dated 24.02.2018, the applicant/complainant had filed Cr,Tr. A. No.D-19/2018 in the High Court of Sindh at Karachi, for transfer of the case from the Court of Judge ATC Naushahro Feroze, inter-alia on the ground that complainant has every apprehension that he would not get justice from the said ATC Naushahro Feroze, and that the learned Presiding Officer belonged to Taluka Dokri, and had personal terms with the Advocate for accused. The said transfer application, on the orders of Hon'ble Chief Justice was sent to this Hon'ble Court at Sukkur where it is still pending adjudication.

15/- That thereafter the applicant/complainant had duly filed the statement/intimation in the Court of Judge ATC Naushahro Feroze, stating that he had filed the criminal transfer application on 02.02.2018 before the Hon'ble High Court of Sindh Bench at Sukkur, hence further proceedings may be stopped before ATC Naushahro Feroze till the final adjudication of the criminal transfer application before Hon'ble High Court of Sindh Bench at Sukkur.

16/- That after the filing of above statement/intimation dated 02.2.2018, the learned Judge ATC Naushahro Feroze, as a matter of propriety and principle, ought to have refrained from passing any further order, specially when the personal allegation had been made against the Presiding Officer.

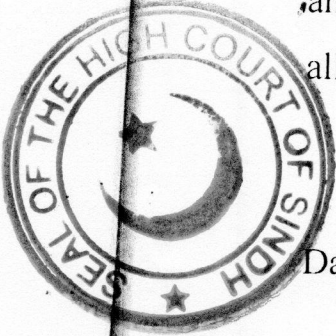


17/- That rather than showing the restraint, as required under the situation, the learned Judge ATC hastily passed the order dated 24.2.2018 thereby confirming the interim bail of both the respondents/accused viz. Sardar Khan and Burhan.

18/- That in view of the above facts and circumstances, it would be crystal clear that there was sufficient material in the case against respondents No.1 & 2 and that the impugned order was hastily passed, without any reasonable and justifiable ground, and was not a speaking order.

19/- That the impugned order has certainly caused grave miscarriage of justice and prejudice to the genuine interests of applicant/complainant, hence the invocation of jurisdiction of this Hon'ble Court would secure the ends of justice and suppress patent mischief, since the non-interference with the impugned order would be tantamount to perpetuate injustice caused due to passing of impugned order.

20/- That it would be in accordance with the provision of law and principles of justice, that the present application may kindly be allowed.



*Mahmood*

Dated 03.03.2018 ADVOCATE FOR APPLICANT/COMPLAINANT

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