

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

Criminal Bail Application No.S-61 of 2017

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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29.05.2017.

Mr. Mumtaz Alam Laghari, advocate for applicant.  
Mr. Shahid Ahmed Shaikh, A.P.G.  
Mr. Rashid Ali Khan, Advocate for complainant.

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ABDUL MAALIK GADDI, J: Applicant/accused Muhammad Ali son of Jiando seeks post arrest bail in case under F.I.R. No.40/2015 registered under Section 302, 504, 34 PPC at P.S B-Section Tando Adam.

2. Brief facts of the prosecution are that complainant Panhwar lodged the report at Police Station B-Section Tando Adam, stating therein that he is residing at village Taro Abro. On 14.05.2015 at evening time Loung and his brother Mubarak harsh words on passing way, on which Loung Abro was annoyed. On 15.05.2015 he alongwith his brother Kamal Abro and cousin Ismaeel s/o Muhabat Abro were working at agriculture land and his brother was coming to home on Jam branch bank, it was 04:00 hours time everyone 01- Loung s/o Jabbar Abro armed with pistol, 02- Jabbar s/o Jiando Abro armed with Hatchet, 03-Darhoon s/o Jiando Abro armed with Lathi, 04- Muhammad Ali s/o Jiando Abro armed with Hatchet, on which Loung abused and asked to his brother Mubarak will not be spared, on saying so Loung fired 5 fires from his Pistol one fire hit Mubarak on his slender part of body and four fires shots hit on his urinary ducts, on which he raised cry and get down on earth, on which they hackled and all the accused saw them and ran away towards their houses. Thereafter they took injured to Police Station from where they got letter for treatment and reached at Taluka Hospital Tando Adam and injured was referred to LMU Hyderabad and injured was under treatment but succumbed and died.

3. After usual investigation challan was submitted against the accused under the above referred sections.

4. Bail application was moved on behalf of the applicant/accused before the learned Additional Sessions Judge-I, Tando Adam, the same was rejected by order dated 04.01.2017.

5. Mr. Mumtaz Alam Laghari, Advocate for applicant contended that the present applicant/accused has no role of causing injury to deceased Mubarak and there appears ground for further inquiry. Learned Counsel relying on the cases of Dilmurad v. The State (2010 SCMR 1178), and Manzoor Hussain and another v. The State (2011 SCMR 902) further contended that neither the intention of the applicant/accused nor participation comes out at this stage and the case falls under further inquiry.

6. Conversely, learned APG for the State assisted by learned Counsel for the complainant has opposed this bail application on the ground that the name of applicant/accused is appearing in the F.I.R. with the role that at the time of incident he was present at the place of incident armed with hatchet only to facilitate the main accused. He further submits that present accused is absconder and remained absent from the Trial Court therefore, he is not entitled for any relief.

7. I have given my anxious thought to the contentions raised at the bar and have gone through the case papers. No doubt the name of the applicant is appearing in F.I.R. with allegation that at the time of incident he was available at the place of incident with hatchet but at the same time it also appears from the record that during incident he did not use hatchet against the complainant or deceased. It appears from the record that deceased Mubarak died due to firearm injury caused by accused Loung and others. In my opinion, in so far as the issue of common intention is concerned, it is now well settled that at bail stage the same is normally one of further inquiry unless there are other compelling reasons and circumstances to reach a different conclusion .e. by way of other pieces of evidence. In the present case as observed above the applicant thought armed with hatchet but he did not use the same against the complainant or deceased, therefore it is yet to be determined at the time of trial as to whether the applicant/accused having any intention to kill deceased till then the case of applicant requires further inquiry.

8. It has vehemently be argued by learned A.P.G as well as learned counsel for complainant that the applicant had remained absconder from the Trial Court after registration of this case and thus he is not entitled to the concession of bail. I have however remained unable to subscribe to this submission because it has already been observed by me above that the case against the applicant call for further inquiry into the guilt of an accused person bail

is to be allowed to him as of right and not by way of grace on concession and in such a case mere absconsion of the relevant accused person may not be sufficient to refuse bail to him.

9. There being grounds of further inquiry under Section 497(2) Cr.P.C, at this stage bail application is allowed. Applicant/accused is directed to be released on bail 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.

10. The observations being of tentative in nature would not affect the merits of the case and if any tangible evidence implicating the present accused during trial occurs the observations would not come in this way.

JUDGE

