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ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 126 of 2017.


Date of hearing	Order with signature of Judge
28.08.2017.	

Mr. Shakeel Ahmed G. Ansari, Advocate for applicant.  
Mr. Anwar Ali Sheikh, Advocate for complainant.  
Mr. Aijaz Mustafa Samtio, DDPP.

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Omar Sial, J: The applicant Muhammad Yousif Marfani has sought post arrest bail in Crime No.50 of 2016 registered under Sections 302, 324, 337-H (ii), 114, 148 and 149 PPC at Police Station Garhi Yaseen, District Shikarpur.

2. Brief facts of the case are that on 08.7.2016 at about 0900 hours, complainant Mst. Hayatan Marfani lodged the aforementioned FIR that she had an old enmity with one Mohammad Panah Marfani and that the parties have settled their dispute. On 05.7.2016 she along with her brother Abdul Ghaffar, sister-in-law Amina Khatoon and one Kareema went for shopping to Garhi Yaseen. After the shopping trip they were all having tea when at about 6:30 p.m. Muhammad Panah, Wajid, Mohammad Yousif, Gulzar, Mehboob, Barkat, all by caste Marfani emerged on the scene. Mohammad Yousif, Mohammad Panah and Mehboob instigated the other accused to murder the complainant party. Upon their instigation, Wajid took out a pistol and fired at Eidan; Gulzar and Barkat took out pistols and fired at Abdul Ghaffar. All the accused then fired at two passersby Tahir Marfani and Mohammad Nawaz Marfani and then left the scene while resorting to aerial firing. Eidan succumbed to his injuries while Abdul Ghaffar was injured.

3. I have heard the learned counsel for the Applicant and the complainant as well as the learned DDPP and have also examined the record with their able assistance. My observations are as follows. 

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4. Admittedly, only the role of instigation is assigned to the Applicant. Such instigation was made jointly by the Applicant and two other accused. No overt act apart from instigation is assigned. Whether the Applicant shared a common intention with the accused who are said to have fired upon the injured and deceased, in the circumstances of the present case, will have to be determined after evidence is led in trial. Moreover, it is not specifically alleged in the FIR that the Applicant was even armed. There is an admitted enmity between the parties and the fact that the net has been thrown wide by the complainant cannot be conclusively ruled out at this stage. Reference may be made to the case of *Subeh Sadiq alias Saabo alias Kalo v. The State* (2011 SCMR 1543). The case of the Applicant therefore, warrants further enquiry.

5. Above are the reasons for my short Order dated 28.8.2017, in terms of which the Applicant was granted bail subject to his furnishing a solvent surety in the amount of Rs.100,000/- (One hundred thousand rupees) and a P.R Bond in the like amount to the satisfaction of the trial Court.

  
6/9/17  
JUDGE

Ansari/\*