

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

Crl. Bail Appln. No. S- 63 of 2019.

Date of hearing	Order with signature of Judge
15.03.2019.	

1. For orders on office objections.
2. For hearing of bail application.

Mr. Riaz Ahmed Ghumro, Advocate for applicant.
Mr. Sharafuddin Kanhar, A.P.G.

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**Muhammad Saleem Jessar, J:** Through this application, applicant Roshan Ali has sought for his admission to post-arrest bail in Crime No.14/2016, registered at Police Station Kety Mumtaz (*District Larkano*), for offences punishable under Sections 302, 395, 148 and 149 P.P.C.

The allegation against present applicant as per F.I.R lodged by complainant Imamuddin Narejo on 04.08.2016, is that on fateful day i.e. 03.08.2016 at about 1.00 p.m., he in company of co-accused Naseem, Ali Gul, Jamaluddin alias Jamali, Assadullah, Jameel, Sanaullah, Imdad and five unknown accused persons duly armed with deadly weapons i.e. G-3 rifles and kalashnikovs robbed the complainant party of their cattle and on resistance, accused Imdad Khuhro fired kalashnikov shot at Ghulam Sarwar, the father of complainant, who died on the spot.

Learned counsel for the applicant mainly contended that, F.I.R is delayed for one day; that no any specific and active role of causing any injury to deceased is assigned to applicant. Per learned counsel, in these circumstances, the question of sharing common intention vicarious liability of present applicants with *co-accused* would be determined at the time of trial.

Notice was issued to complainant. However, as per report by concerned police, the complainant is proclaimed offender in some cases.

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Learned A.P.G. appearing for the State opposed grant of bail in favor of applicant on the ground that he has been nominated in the F.I.R with his name and parentage duly armed with G-3 rifle with allegation of committing dacoity of cattle, and has facilitated the principal accused, who fired at deceased, as such he is also vicariously liable for the murder of deceased.

It appears that applicant has been nominated in the F.I.R, but no specific role of causing any injury to deceased is assigned to him, though he was allegedly having kalashnikov in his hand, but he did not use the same in the commission of alleged offence. As such, question of common intention and vicarious liability of the applicant in respect of murder of deceased would be determined at trial. So for as, section 395 P.P.C with regard to robbery of cattle is concerned, it carries alternate punishment i.e. imprisonment for life or imprisonment not less than four years and more than ten years and it is well settled principle of law that when the alleged offence is punishable with maximum as well as minimum quantum of sentence, the Court may consider the minimum sentence at bail stage. As for as, absconson of the applicant is concerned, it is also well settled law by now that mere absconson would not come in way of grant of bail, if otherwise a case for bail is made out. In this regard, the Honourable Supreme Court of Pakistan in the case of MITHO PITAFI versus THE State (2009 SCMR 299), has observed that bail could be granted, if the accused has good case for bail on merits and mere his absconson would not come in the way while granting him bail. The case has been challaned and applicant is no more required to police for purpose of investigation.

A tentative assessment of all the above factors makes the case of applicant one of further enquiry in terms of *subsection (2) of Section 497 Cr.P.C.* Accordingly, the instant bail application stands allowed. The applicant is granted bail upon his furnishing solvent surety in the sum of Rs.300,000/- (*Three hundred thousand rupees*) and P.R bond in the like amount to the satisfaction of trial Court.



Before parting with this order, it is made clear that, observations made herein above are tentative in nature and would not prejudice case of either party at trial.


JUDGE

Ansari/*