

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

Crl. Bail Appln. No. S- 83 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. Ghulam Akbar Soomro, Advocate for applicant.

Mr. Sharafuddin Kanhar, A.P.G.

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**Muhammad Saleem Jessar, J:** Through this application, applicant Irshad Dodani Jatoi has prayed for grant of post-arrest bail to him, in Crime No.58/2018, registered at Police Station Khanpur (*District Shikarpur*), for offences punishable under Sections 301, 324, 457/2, 380, 511, 148 and 149 P.P.C.

It is alleged that applicant alongwith six other *co-accused*, committed house trespass into house of Ashique Ali and Mumtaz Ali during night hours with intent to commit theft, however on awakening of inmates of the house they started firing upon them, who by falling on ground saved themselves, but some of their fires hit to their two companion and ultimately the culprits by taking their injured companions escaped from place of incident. In the morning, the villagers took foot prints of the culprits and blood drops led them to paddy crop, where they found two persons in injured condition; one of them was lying unconscious, while another was dead. Said Ashique Ali and Mumtaz Ali informed about the incident to police, who came on spot and the injured culprit was identified to be Irshad (*present applicant*), while dead accused was identified as Rahib, who were brought to police station. Since, none of the above named persons, did come forward to register case, as such the F.I.R was lodged by ASI Irshad Ali Abro of P.S Khanpur, on behalf of the State.

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Perusal of F.I.R reflects that the culprits trespassed into the house of Ashique Ali and Mumtaz Ali during night hours with intent to commit theft and on their awakening they made firing upon them, thus they are the victims of the alleged incident, but surprisingly none of them has become complainant in the case. This fact smells some malafides on the part of prosecution. Moreover, no specific role has been assigned to applicant, but there is general allegation of firing against all the culprits. There is also no recovery of any incriminating article from possession of applicant, though he is alleged to have been arrested on spot in injured condition. It appears that F.I.R has been registered for offences punishable under Sections 301, 324, 457, 380 and 511 P.P.C. *Prima-facie*, application of Section 301 P.P.C. would not be applicable against the present applicant, as he is not alleged to have fired but he is alleged to have been fired at. Whereas, application of Section 380 P.P.C would also not be applicable in the case, as no theft of cattle was committed but only attempt was made. Now, there remains only Sections 324 and 457 P.P.C. Out of them, applicability of Section 324 P.P.C. would also be determined at the time of trial after recording of evidence, as none from complainant party has sustained any injury at the hands of culprits and there is also no repetition of fires by the accused persons, though complainant party was completely on their mercy. In these circumstances, when applicability of main sections/ offences is to be seen at the time of trial, then applicability of Section 457 P.P.C would also be determined at trial, whether it was rightly applied or not, as body of dead accused and injured accused were found from the land, and not from house of alleged victims. The challan of the case has already been filed and applicant is no more required to police for the purpose of investigation. It is well settled principle of law that bail is not to be withheld as a punishment and that there is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their involvement.



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 admitted to 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/*