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

Crl. Bail Appln. No. S- 172 of 2017.

Date of hearing	Order with signature of Judge
29.11.2017.	

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

Mr. Abdul Rehman A. Bhutto, Advocate for applicant.

Mr. Sardar Ali Rizvi, D.P.G.

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Muhammad Saleem Jessar, J: Through this application, applicant Muhammad Azam Golo seeks his admission to post-arrest bail in Crime No.70/2016 registered at P.S Buxapur, for offences punishable under Sections 302, 324, 337-H (2), 148, 149 P.P.C.

The crux of prosecution case as alleged in F.I.R lodged by complainant Zaffar Ali Golo on 13.09.2016, is that on 12.8.2016 complainant alongwith his son Altaf Hussain, his nephew Akhtiar, his brothers Zia-ul-Haq, Piyaro and nephew Nadir were present in the Otaq, as such at about 7.00 p.m. accused Sulleman, Muhammad Azam, Fida Hussain, Abdul Wahab having Kalashnikovs, Muhammad Ishaque having lathi, Abdul Waheed, Shah Ali, Azizullah and two unknown persons armed with guns came there; out of them accused Sulleman fired shot upon Altaf Hussain, accused Fida Hussain fired at Akhtiar, accused Abdul Wahab fired shot upon Zia-ul-Haq, and accused Muhammad Azam fired shot upon Piyaro, accused Muhammad Ishaque caused lathi blow to Nadir with result all five persons received injuries; however two of them namely, Altaf and Akhtiar lost their lives.

Learned counsel mainly, contended that the role assigned to applicant is that of causing fire upon PW Piyaro and the injury received by this witness has been declared by the medico legal officer as "*Jurh-Ghayr-Jaifali Mutalahimah*", which falls under Section 337-F (iii) P.P.C and is punishable only upto three years. That, during course of

investigation two co-accused were let off by the police, which proves that A version of the complainant was not believed by the investigating agency; that there are counter cases between the parties in respect of the same incident and in the counter case accused Bakhat Ali has been granted pre arrest bail, whereas Qudratullah has admitted to post arrest bail by this Court vide common Order dated 27.02.2017 passed in Crl. Bail Appln. No. S- 481 of 2016 and Crl. Bail Appln. No. S- 07 of 2017.

On the other hand learned DPG appearing for the State has opposed the application and prayed for dismissal of the same.

I have heard the arguments advanced at the bar, perused the police file with assistance of learned counsel for respective parties and have gone through the material made available before me.

Admittedly, the parties are on inimical terms and there is no denial that in earlier F.I.R No.71/2016 lodged by Mst. Sehat Khatoon, in which one person of applicant's side namely, Aarab was murdered and one person namely, Shahid Ali had sustained injuries at the hands of complainant party in same incident, but the complainant has not disclosed this fact and has willfully suppressed this fact only to defeat the case of applicant. It is settled principle of law that, in the cross cases the question of aggression is to be determined by the trial Court after recording evidence and at this juncture case against applicant requires further enquiry. In this context, reference can be had from the case of *Mir Hassan and another v. The State* reported in 1987 P.Cr.LJ 1336. In case of *Mir Hassan (supra)* the specific role of causing sharp side injury to accused on vital parts of the complainant party was assigned but being the cross cases, the Hon'ble bench of this Court had held in following terms:

*"I do not like to discuss the merits of the case but suffice to say there will be a serious question for consideration at the trial as to which party was aggressor and the mala fide and false implication due to influence of the complainant with police, therefore, it is a case of further enquiry."*

Moreover, the injury, attributed to the applicant has been declared by the medico legal officer as "*Jurh-Ghayr-Jaifah Mutalahimah*", which falls under Section 337-F (iii) P.P.C and carries maximum punishment upto three years. Further, allegation of common intention has now stood settled to be normally one of further enquiry unless there are other compelling reasons and circumstances to reach a different conclusion. Reference in this regard may well be made to the case of *Dilmurad v. State* 2010 SCMR 1178, wherein Hon'ble Apex Court has held as under:

*"6. .... In our opinion in so far as the issue of common intention is concerned, it is now well-settled that at the bail stage the same is normally one of further enquiry unless there are other compelling reasons and circumstances to reach a different conclusion i.e. by way of other pieces of evidence, which could definitely connect the applicant/ accused with the crime in question..."*

It is matter of record that in the counter case accused Bakhat Ali has been granted pre arrest bail, whereas Qudratullah has admitted to post arrest bail by this Court vide common Order dated 27.02.2017 passed in Crl. Bail Appln. No. S- 481 of 2016 and Crl. Bail Appln. No. S- 07 of 2017. The investigation of the case is over and challan has been submitted. This is so, that it is settled principle of law that concession of bail ought not to be withdrawn by way of pre mature punishment. The position, being so, also tilts the scale of justice in favor of bail rather jail. Reference may well be made to the case of *Syed Khalil Hussain Shah v. The State and another* reported in 2014 SCMR-12, wherein it is held as under:

*"6. .... The fact that the petitioner has been in jail for more than seven months would also tilt the scales of justice in favor of bail rather than jail. Reference to the case of *Muntaz v. The State (supra)* 2012 SCMR 556, will not advance the case of the respondents, as each case being captive of its own facts and circumstances has to be decided accordingly. The case of *Syed Abdul Baqi Shah v. The State* 1997 SCMR 32, may well be referred to in this behalf, where such aspect was considered as ground for grant of bail."*

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In view of above circumstances, the applicant has been able to make out a case for bail in his favor. Accordingly, instant bail application is allowed. Applicant is admitted to bail upon furnishing a solvent surety in the sum of Rs.100,000/- (One hundred thousand rupees) and P.R bond in the like amount to the satisfaction of trial Court.

Needless, to mention that observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGMENT  
8/11/12

Ansari/\*