

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr.Bail Appln:No.S- 282 and 352 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on office objection.
2. For hearing.

21-08-2017

Mr. Aijaz Shaikh, Advocate a/w applicant, who is present on bail in Cr.B.A.No.S-282/14.

Mr. Ghulamullah Chang, Advocate a/w applicant, who is present on bail in Cr.B.A. No.S- 352/14.

Mr. Erum Ahmed D.D.P.P for the State.

Mr. Waqar Ahmed Memon, Advocate for complainant.

=

ABDUL MAALIK GADDI,J- By this common order I intend to dispose of above captioned Criminal Bail Applications as these bail applications relate to the same subject matter involving common question of law and facts, arising out of the same Crime viz. bearing No.28 of 2014 for offence under Sections 324, 392, 147, 148, 149, 427 P.P.C of P.S Market, whereby the applicants have assailed the legality and propriety of the impugned orders passed by the Ist Additional Sessions Judge, Hyderabad vide order dated 12.3.2014 and 29.3.2014 respectively. Today both bail applications are fixed for confirmation or otherwise.

2. Precisely, prosecution case is that on 14.02.2014 at about 1615 hours complainant Mohammad Ali received telephonic message made by his friend Mohammad Sultan Ghullo that his son namely Aqeel Ahmed received firearm injuries near bone Care hospital Hyderabad and he has been brought at Civil hospital. On such, complainant rushed there and saw that his son Aqeel in Emergency Ward, who had received firearm injures on his hips and the police was also available near to the injured. Son of complainant Aqeel Ahmed informed him that one of his friend Arbaz Memon had taken Rs.20,000/- loan from him which was demanded by injured before going to China but said amount was not returned. His son had gone to China and after completing tour, he again demanded money from

Arbaz Memon, on which, Arbaz asked him to come near the Bone Care Hospital Hyderabad, to receive the said amount. On reaching there, injured met with one Sultan and uncle Khair Mohammad, who also sat in the car of the victim in backside while injured remained sitting on driving seat. In the meanwhile, five persons riding on two motorcycles came there, effecting firing from backside of the car, who were identified as accused Ayaz, Murtaza, Muzammil Lashari, Ammar Pasha and one unknown person. It is further disclosed that Arbaz Memon and Murtaza Memon came towards the driving side while Muzamil Lashari and others came from the left side of the car. Arbaz Memon said to Aqeel Ahmed that neither he would be speared nor the question of money will rise saying so Arbaz Memon fired from his pistol, in resulting Aqeel Ahmed received bullet injury on his right hip while Muzamil Lashari fired from the other side and his bullet also hit to the another hip of victim. Arbaz Memon took a mobile of victim from the car's dashboard and then all accused persons fled away. Subsequently complainant appeared at police station and lodged present FIR, hence the instant bail applications.

3. It is stated by the counsel for applicants that applicants are innocent and have falsely been implicated in this case; that no specific role is assigned to applicants and the role allegedly assigned to applicants is quite untrustworthy and shaky, requires detailed probe inquiry into it; that the injury sustained by the injured is not on vital part; that injury was caused from backside of the car but the persons sitting on rear seat did not receive even a single scratch; that there is dispute between the parties over money transaction which is admitted by the complainant in his FIR; that the place of incident is thickly populated area but no independent person has been cited as a witness of alleged incident; that there is delay of one day in registration of FIR without plausible explanation; that no such incident has been taken place and matter requires further enquiry at trial. He lastly prayed for justice.

4. Conversely, D.D.P.P. for the State assisted by learned counsel for complainant has argued that the name of applicants transpires in the FIR with specific role of causing firearm injury to injured Aqeel Ahmed; that said injured Aqeel Ahmed is subjected to examine by the Doctor and such medical certificate is issued whereby declaring his injury as Section 337-F(iii) QD Firearm, which is

punishable upto 03 years; that the applicants are not entitled for concession of bail and their bail plea may be rejected in the larger interest of justice.

5. Arguments heard and record perused.

6. It appears from the record that the alleged incident took place on 14.2.2014 at 1600 hours, while FIR has been registered on 15.2.2014 at 1800 hours after the delay of about one day, for which no satisfactory explanation has been furnished. Allegations against applicants are that they fired from their pistols at the injured Aqeel Ahmed, which hit him on his right and left hips. The injuries attributed to the applicants have been declared by the Doctor as under sections 337-F(i) PPC which is bailable and the punishment of the same is only one year, however, section 337-F(iii) PPC is not bailable but the punishment of said section as provided is three years, thus, it appears that the case against applicants/accused does not fall within the prohibitory clause of section 497 Cr.P.C. Even otherwise, it appears from the record that injuries sustained by the injured is on non-vital part of the body and no empty was recovered from the place of incident to prove the factum of firing. It also appears that section 392 PPC has not been made out during investigation and the same has been deleted in challan sheet. It is very surprising to note that firing was made from the back side of the car, but the persons sitting on the rear seat did not receive even any single scratch but victim receive fire arm injuries on his hips in sitting position on the driving seat of the car, which facts requires thoroughly scrutiny during trial, till then, the case of the applicants required further probe. It appears that in this matter investigation has been completed and challan against applicants/accused has already been submitted and the applicants/accused are no more required for further investigation. This matter pertains to the year of 2014 and even the trial has not been commenced, as such, under these circumstances no exceptional circumstance appears in this case to withhold bail of the applicants. I, therefore, in view of the above allow these bail applications and confirmed the interim pre-arrest bail in favour of applicants passed earlier on same terms and conditions with directions to the applicants/accused to appear before the trial court and trial court is directed that after receipt of this order, proceed the matter

expeditiously and decide the same as per law within the period of three months and no unnecessarily adjournments shall be granted to either side.

7. Needless to mention here that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

JUDGE

Ahmed/Pa