

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Bail Appn:No.S- 635 of 2016
Cr.Bail Appln:No.S- 1219 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
For hearing.	
<u>21-09-2017</u>	

Mr. Faisal Ali Raza Bhatti, Advocate a/w applicant, who is present on bail in Cr.B.A. No.S- 635/14.

Mr. Nadeem Hyder Tarreen, Advocate a/w applicants, who is present on bail in Cr.B.A.No.S-1219/14.

Mr. Shahid Ahmed Shaikh, D.P.G.

Mr. Muhammad Zainuddin Baloch, Advocate for complainant.

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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.158 of 2014 for offence under Sections 324, 147, 148, 149, 337-H(ii) P.P.C of P.S Market, whereby the applicants have assailed the legality and propriety of the impugned order passed by the IIIrd Additional Sessions Judge, Hyderabad vide order dated 05.11.2014. Today both bail applications are fixed for confirmation or otherwise.

2. Precisely, prosecution case is that complainant Javed lodged FIR, stating therein that on 27.8.2014, he was available at his house and his sons Sajid, (2) Nizamuddin alias Nazim and (3) Abid were sitting outside the house, when at about 2145 hours, he heard firearm reports, as such he came out of the house and saw that blood was oozing from right leg of thigh of his son Niazamuddin alias Nazim and blood was oozing from left side of arm of Abid and namely Aadil son of Ameerullah Qureshi, (2) Waseem son of Siddique Qureshi, (3) Mohsin son of Siddique Qureshi and three unknown persons, who were armed with pistols and while making aerial firing boarded in Corolla Car No.ATR 726 and ran away. The complainant further

stated that 4/5 days back, the parts of motorcycle were stone away as such today they made enquiry from Aadil son of Ammerullah, on which Aadil became annoyed and alongwith Waseem son of Siddique Qureshi and Mohsin son of Siddique Qureshi and three unknown persons duly armed arrived and all have made straight firing upon them with intention to kill and due to their firing, Nazimuddin alias Nazim and Abid became injured and the accused while making aerial firing boarded in the car ran away. Immediately, the complainant shifted his injured sons Nizamuddin alias Nazim and Abid to civil hospital Hyderabad and the police also arrived and issued letter for treatment and then the complainant appeared at police station and lodged the FIR.

3. It is stated by the counsel for applicants that applicants are innocent and have falsely been implicated in this case due to enmity; that complainant party exchanged hot words over parking of motorcycle at Mobile Market where complainant party mercilessly beaten the applicant, who lodged such NC report and obtained letter for treatment and then complainant with the collusion of police has mentioned his name in the challan sheet only to save his skin from punishment and put pressure upon the applicant not to lodge FIR against him; that there is no specific role or overt act assigned to any of the accused and only general allegations are alleged against them; that the alleged offence took place in a thickly populated area but no private person from the locality has been cited as witness of the alleged offence; that according to the contents of FIR the act of firing is not repeated by the accused, hence there is no intention to attempt to commit murder, therefore, the ingredients of section 324 PPC is not made out, which is misapplied by the police only to magnify the case, whereas remaining sections inserted in the FIR, hence prayed for justice.

4. Conversely, learned DPG 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 Abid and Nizamuddin; that the applicants are not entitled for concession of bail and their bail plea may be rejected in the larger interest of justice.

5. I have heard the learned counsel for the parties at length and have perused the record so available before me.

6. Read-through the contents of FIR the enmity in between the parties is admitted by the complainant upon stolen away the parts of motorcycle. Further, no doubt the names of the applicants are appearing in FIR but nowhere in record it is mentioned that which of the accused caused fire arm injury to injured Nizamuddin and Abid, hence, same requires deeper appreciation at trial. Furthermore, the injuries attributed to the applicants have been declared by the medico legal officer as under sections 337-F(iii) PPC, is not bailable, but the punishment of said section as provided as Daman and imprisonment of either description for three years, thus, it appears that the case against applicants/accused does not fall within the prohibitory clause of section 497 Cr.P.C however, looking to the whole episode as narrated in the FIR, the applicability of section 324 PPC also needs probe. 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, 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 regularly

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

JUDGE