

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

Cr. Bail Application No.S-476 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>21.09.2017.</u>	<p style="text-align: center;">For hearing.</p> <p>Mr. Ghulam Mustafa Abbasi, Advocate for the applicants. Mr. Shahid Ahmed Shaikh, D.P.G for the State. None present for the complainant though served.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Having remained un-successful in obtaining their release on bail from the trial Court in Crime No. 20 of 2016, registered under sections 302, 504 and 34, PPC at Police Station, Manjhand, now the applicants Sher Muhammad and Meer Muhammad are seeking their release on bail through instant bail application.</p> <p>2. Brief facts of the prosecution case are that on 04.12.2016 the complainant Mst. Sabul got lodged F.I.R. alleging therein that she married with Muhammad Murad and has two sons and two daughters from the said wedlock. Her daughter Mst. Waziran Begum got married with Ashique Ali Birkmani. The complainant earned her livelihood by netting the rope. It is further alleged that there is old dispute over the plot running between complainant and accused Wakeel Ahmed and his relatives. On 03.12.2016 the son of the complainant namely Mazhar Hussain and her brother-in-law Dodo were present in the house, while the complainant and her daughter Mst. Waziran Begum were netting the rope on the plot in front of the house, they saw everyone accused Wakeel Ahmed with gun, Sher Muhammad with danda and Meer Muhammad with hatchet came there at 01.00 p.m. while abusing the accused Sher Muhammad declared that since they restrained complainant party from coming over the plot, but they did not obey and occupied the plot, to which, PW Mazhar Hussain and Dodo came out of the house. The complainant replied to accused that they were netting rope, on hearing this and within the sight of complainant, they accused Wakeel Ahmed became angry and made straight gun fire at Mst. Waziran Bgum</p>

which hit on her back to which, she fell down, thereafter all the accused persons decamped.

3. It is stated by the learned counsel for applicants that case against the applicants is false and has been registered due to enmity; that applicant/accused Meer Muhammad who is aged about 83 years, therefore, he has right of bail as per section 497(i), Cr.P.C; that there is dispute between the complainant and applicants/accused over the plot, which the complainant did not disclose survey number and measurement of plot; that the complainant implicated entire family members in the above case; that the deceased Mst. Waziran was ousted her husband from his house due to illicit relation with another person, due to which her husband ousted Mst. Wazeeran and since she was residing with her parents` house; that the murder of deceased Mst. Wazeeran was committed by the complainant alongwith her brother because she was already declared as `Karo-Kari` by her husband; that the complainant managed false F.I.R. against the applicants/accused in order to usurp the survey land; that nothing was recovered from the applicants/accused; that as per F.I.R, the role of the present applicants/accused is mere presence at the spot and they have not committed any injury to the complainant party; that the motive shown by the complainant in F.I.R. is groundless and weak, therefore, facts and circumstances of the case are attracted the provision of further inquiry; that as per F.I.R, the incident took place in broad day light at the house of complainant, but no independent PW/mashir has been cited or engaged by the complainant; that the applicants/accused are behind the bar since their arrest and further keeping them behind the bars would not serve any fruitful purpose; that the accused are no more required for any useful purpose and the challan has been submitted; that all the witnesses cited in the present case are favorite; that the recovery has been foisted by the police, otherwise no any recovery has been made from the applicants/accused. In support of his contention, learned counsel for applicants has relied upon the case of MANZOOR HUSSAIN v. STATE [2011 SCMR 902] and prayed for grant of bail.

4. Learned D.P.G. for the State has opposed this bail application on the ground that accused are nominated in the F.I.R; that there is motive; that the

accused have shared common intention in commission of the murder of one lady; that accused were declared proclaimed offender, hence they are not entitled for bail.

5. I have given my anxious thoughts to the contention raised at the bar and have gone through police papers so available before me.

6. No doubt, the names of the applicants/accused are mentioned in the F.I.R. It appears from the record that at the time of incident, applicant Sher Muhammad was armed with `Danda`, whereas, applicant/accused Meer Muhammad was armed with `hatchet`, but it does not reflect from the record that whether they caused any injury either to the deceased or prosecution witness. However, it appears from the record that the main accused Wakeel Ahmed, who was armed with gun caused gun firearm injury to deceased, which hit her on her back side and the post mortem report of the deceased Mst. Wazeeran showing only one firearm injury on her back side with two injuries that is entry and exit, which only attributed to the principal accused Wakeel Ahmed, who is behind the bar.

7. As far as the role of the present applicants/accused is concerned, the present applicants/accused were with the principal accused, but as observed above, the present applicants/accused have neither caused any injury to the deceased or PW, therefore, it is yet to be determined by the trial Court at the time of trial whether the present applicants/accused had any common intention to commit murder of the deceased Mst. Wazeeran and this aspect of the case could not be determined at this stage, as it requires evidence. I have gone through the case law cited [*supra*], wherein the Hon`ble apex Court observed that bail could not be refused on the basis of vicarious liability, unless it is shown through positive evidence that indeed accused had played a role in the crime. During course of arguments, I have asked specifically to the learned D.P.G, whether the applicants/accused had caused any injury to the deceased or PW, he replied in negative.

8. As far as the question of absconsion of the applicants/accused in this case is concerned, it is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in the way while granting the bail and as observed above, in this

matter, the applicants/accused though armed with `Danda` and `hatchet` have not used the same in the commission of offence, therefore, on the ground of absconsion bail could not be refused. It is also settled principle law that every criminal case is to be decided on its own facts and circumstances.

9. In view of above facts and circumstances, I am of the opinion that applicants have made out a case for grant of bail, therefore, they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.200,000/-[Rupees two hundred thousand] each and PR bond in the like amount, to the satisfaction of trial Court.

10. Before parting with this order, it is made clear that the observations made herein above are tentative in nature and shall not affect the merits of the case.

The bail application stands disposed of in the above terms.

JUDGE.

suffice to say that the Hon`ble apex Court in the case of MITHO PITAFI v. STATE [2009 SCMR 299] has been observed that