

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

Cr. B.A. No.S-571 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

24.10.2016.

Mr. Ghulamullah Chang, Advocate for the applicant.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

Mr. Wali Muhammad Jamari, Advocate for complainant.

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Through instant bail application, applicant seeks post-arrest bail in Crime No.18/2014, registered at Police Station SITE Hyderabad, under sections 302, 392 PPC.

2. The facts of prosecution case are that on 03.02.2004 complainant's elder brother Gul Muhammad alongwith his maternal cousin Ameer Palijo, on a motorcycle, left for distributing the marriage cards amongst the relatives; at 2135 hours he (*complainant*) was informed through mobile phone by Amir that after distributing the cards at Ganjo Takkar and having got petrol filled from Shell Petrol Pump Zeal Pak factory, were coming to home. At 2130 hours they reached in front of gate of Zeal Pak B-colony Tando Muhammad Khan road where two (2) armed persons, on a Motorcycle, came from behind and while showing weapons directed to stop the motorcycle but on not stopping the Motorcycle both accused persons fired upon Gul Muhammad which hit him below the right side of ribs and exited from left side and after robbing cash Rs.35,000/- from the pocket of Gul Muhammad while Q.Mobile and cash of Rs.1600/- from him so also his NIC and that of Gul Muhammad, both the accused escaped away towards Zeal Pak Market. The accused persons were already known to him who were Dilber Khan S/o Hamzo Khan Chandio and Raheemullah Pathan. On receipt of such information complainant alongwith

Abdul Sattar and Faiz Muhammad Palijo reached at place of incident in their car and saw Gul Muhammad was wriggling on eastern side of road in front of gate of Zeal Pak B-colony and blood was oozing from his side. They immediately put him in car and drove towards hospital for treatment. The injured disclosed to him that accused persons were Dilber Khan Chandio and Raheemullah Pathan who robbed cash, mobile phone and other articles from him however injured succumbed to injuries while was on the way to hospital.

3.Learned counsel for applicant has argued that complainant Noor Muhammad Palijo, deceased Gul Muhammad and PW Ameer Ali did not know to applicant nor applicant knows them; that applicant was arrested on 04.02.2014 from Deewan Mushtaque Textile Mills in presence of his co-labourers by the police and then he was maltreated; tortured by police of police stations Hatri and CIA Centre Hyderabad and implicated him in four false cases and then after five days of murder of deceased, his own brother lodged F.I.R. by giving the name of applicant; that Danishnama, Lash Chakas form and postmortem report, the deceased was identified by his cousin Ameer Bukhsh and name of complainant does not appear which shows that complainant did not reach at place of incident; memo of dead body was prepared at hospital at 2130 hours in presence of mashirs Adil Khan and Noor Muhammad Palijo which clearly shows that at 2130 hours neither deceased was at alleged place of incident nor such incident as alleged was occurred and there is no eye witness of alleged incident so also there is delay of five days in lodgment of F.I.R.; that section 17(4) HO is not applicable to the case of applicant. He relied upon 2005 MLD 1267 Karachi.

Learned A.P.G. has opposed the grant of bail to applicant on the ground that applicant is named in the F.I.R. with specific role; he is involved in heinous offence of murder and his name was disclosed by the deceased to the complainant.

4. Heard arguments of learned counsel for parties and perused record.

5. A bail, *on merits*, in a case, falling within prohibitory clause of Section 497(i) Cr.PC, could only be granted if accused succeeds in bringing his case within meaning and object of Section 497(ii) Cr.PC and not *otherwise*.

Admittedly, name of the applicant is mentioned in the F.I.R with specific role of firing and commission of robbery. The learned counsel for applicant / accused though attempted to paint a different story (*defence*) for appearance of the name of the applicant/accused which, in absence of any undeniable proof, can neither be accepted nor can be considered at *bail stage* because this shall *surely* fall within meaning of *deeper appreciation*. The reference to *Lash Chakas, Danistnama etc*, referred by counsel for the applicant to dispute presence of complainant, rather affirms the presence of PW Ameer who does support the prosecution case. The complainant *however* is not claimed by prosecution to be an eye-witness. The complainant is real brother of the deceased while PW Ameer is cousin who have named the applicant / accused as one of the *murderers* and since per counsel for the applicant/accused the parties were not known to each other hence there appears no reason to accept the plea of false implication. The delay is fully explained as complainant lodged the FIR after funeral ceremony which naturally caused consumption of some time. Since, while deciding the bail application, I cannot go into the *details* of merits of the case which *otherwise* is prohibited rather as per law of the Superior Court, the Courts should confine themselves to tentative assessment *only* which too with reference to material collected by *prosecution*. The case is at initial stage and the allegations against applicant are serious in nature with which the applicant / accused *prima facie* appears to be linked, therefore, at this stage, I do not find the applicant / accused entitled for concession of bail; the case law cited by the learned

counsel for applicant is not applicable in the circumstances of case. Consequently, bail application is dismissed; let it be clarified that the observations made herein above are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

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