

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr.B.A.No.D-73 of 2016

Cr. B.A. No.D-74 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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14.11.2016.

Mr. Bhagwandas Bheel, Advocate for applicants in Cr.B.A.No.D-73/2016.

Mr. Mian Taj Muhammad Keerio, Advocate for applicant in Cr.B.A.No.D-74/2016.

Syed Meeral Shah Bukhari, Deputy Prosecutor General.

Mr. Ghulam Sarwar Baloch, Adv: for complainant.

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Through instant bail application, applicant seeks post-arrest bail in Crime No.33/2016, registered at Police Station Market, under sections 302, 324, 353, 147, 148, 149 PPC r/w sections 6/7 Anti-Terrorism Act, 1997.

2. Precisely, prosecution case is that, complainant Mirza Waqar Baig, Custom Inspector Hyderabad, lodged F.I.R. on 06.03.2016 at 0300 hours regarding incident which took place on 05.03.2016 at 2345 hours, stating therein that on 05.03.2016 Additional Collector of Custom Umer Shafiq, Superintendent of Custom Muhammad Saleem Chana, Deputy Superintendent Custom, Anwar Ahmed Siddiq, Custom Inspector Abdul Ghaffar Shaikh, complainant himself, Hawaldar Muhammad Aslam, Constable Ranjha, Muhammad Hassan, Ali Nawaz, Muhammad Essa and Muhammad Nisar Ahmed left custom office at 2315 hours in three Government vehicles for patrolling. During patrolling they received a tip off that smuggled cigarettes and Guttka in huge quantity is stored at Abul Khair-Abul Hassan Store situated in Tower Market. On receipt of said information custom patrolling party reached at the pointed place at 2343 hours and Additional Collector alongwith Superintendent and Deputy Superintendent entered into the shop while complainant through stairs went in Godown and started recovering Indian Guttka while remaining staff was outside the shop. During search the complainant heard fire arms report and they came out and saw that 8/10 persons armed with weapons were firing. The complainant, PC Muhammad

Essa and PC Nisar Ahmed identified three of them as Shah Muhammad alias Lalai Pathan, Muhammad Ayoub Pathan and Abuzar S/o Ayoub Pathan. The complainant side saw that Inspector Abdul Ghaffar Shaikh fallen on the ground having a bullet injury on his head and was bleeding. The complainant side also retaliated fire in defence and thereafter, culprits ran away. Complainant side then took injured Inspector Abdul Ghaffar Shaikh and recovered bags of Guttka and injured Inspector Abdul Ghaffar Shaikh was taken to Civil Hospital where doctor declared him dead. In the meantime, police of Market P.S also arrived and after completing formalities and getting post mortem conducted of deceased Inspector Abdul Ghaffar Shaikh, complainant appeared at P.S. and lodged F.I.R.

3. Learned counsel for applicant contends that neither the complainant in the F.I.R. nor any of the P.Ws. in their respective statement under section 161 Cr.P.C. stated that present applicant fired at deceased Custom Inspector Abdul Ghaffar Shaikh, therefore, it is yet to be seen at trial as to whose shot hit the deceased on his head, therefore, case requires further inquiry and applicant may be granted bail. He further contends that at the time of raid no concerned Magistrate was associated nor any entry was made at P.S concerned, which also makes prosecution story doubtful; that incident taken place at odd hours, therefore, identification of the applicant was hardly possible and F.I.R. is also lodged after inordinate delay.

4. Learned D.P.G. dully assisted by learned counsel for the complainant has opposed the bail plea and contends that applicant is nominated in F.I.R. assigning role of firing alongwith his co-accused which resulted in death of Custom Inspector; that offence is heinous one and if applicants are admitted to bail they will abscond away as they are resident of tribal area.

5. Heard and perused record.

6. No doubt complainant and P.Ws. have not specifically nominated only present applicants for the murder of deceased custom inspector, however, complainant in his F.I.R. claimed to have identified accused persons while

firing which resulted fire arm injury to deceased Custom Inspector Abdul Gaffar Shaikh on his head who succumbed to injuries.

What *prima facie* appear from the statements of witnesses is that *i)* incident took place at shop of applicants; *ii)* the Custom inspector receiving fire-arm injury there and died and *iii)* applicants were seen firing which make a *chain* of unbroken *links* resulting into a conclusion that it were one of the applicants whose fire shot resulted into death of the Custom Inspector. It is not a mere case of *sudden* flare up but the firing from the applicants was for no other purpose but to have an escape. Besides, making of *straight* firing *prima facie* could be of no other purpose but with an active knowledge of it (*firing*) hitting its target. Thus, an attempt to sifting the grain out of chaff is not possible because it *otherwise* requires evaluation of evidence which, *at this stage*, is not permissible.

7. Further, the applicants have not produced *least* pleaded any substantial material showing such enmity which made the complainant to *falsely* name the present applicants in a murder of complainant's colleague. In absence thereof, the plea of *false* involvement cannot be said to be having any substance or weight. As far as delay in lodging of the F.I.R. is concerned, the same is explained in the F.I.R; itself by the complainant that after incident they took dead body of the custom inspector to Civil Hospital and after post mortem, they went to the police station and lodged F.I.R. Even otherwise, mere delay in lodgment of an FIR is no ground to insist bail in a case of capital punishment particularly when it is not alleged to have benefited the complainant party in substituting the real with innocent which *normally* requires serious and grave motive e.t.c., which is lacking in the instant case.

8. Such incident *surely* leave an impact upon those, *in uniforms*, wonder to provide a *blanket* to people to sleep thereunder *peacefully* therefore, such cases are not of simple *murder* done in name of enmity. Thus, a *distinction* is to be kept in mind between an *ordinary* case and one committed against law enforcing officials, performing his official duties. Such offenders belong to a *distinct* class hence qualify to be treated as *such*. An accused of such like

cases would be entitled to be released on bail when he, from all aspects, *prima facie* establishes that there are no *reasonable grounds* to believe his *innocence* and not on mere hypothesis which *otherwise* normally exist in every case. Reference in this regard can well be made to the case of Muhammad Abbasi v. State 2011 SCMR 1606 wherein it is held as:

“10. ... It is well settled that mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection (2) of section 497 Cr.P.C and it is not possible to release the accused notwithstanding the fact that he is involved in heinous criminal case, particularly, in the case where the eye-witnesses have duly implicated him with the commission of offence. Reference in this behalf may be made to the cases of Asmatullah Khan v. Bazi Khan (PLD 1988 SC 621), Mst. Parveen Akhtar v. The State (2002 SCMR 1886), The State through D.G ANF v. Abdul Ghani 2010 SCMR 61)

9. In addition to above, crime weapon viz. 30-Bore pistol is also recovered at the pointation of applicants and in such circumstances prosecution possess sufficient evidence which *prima facie* connect the applicant with commission of offence. The offence is heinous one and provides capital punishment, therefore, we are of the view that applicants are not entitled for concession of bail. Accordingly bail application is dismissed.

JUDGE

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