

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

Cr.Bail.Appl.No.S- 325 of 2016

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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01.11.2016.

Mr. Muhammad Sachal Awan, Advocate for applicant.
Syed Meeral Shah, D.P.G. for the State.

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SALAHUDDIN PANHWAR, J: Through instant application, applicant seeks post arrest bail in Crime No.09/2014 u/s 302, 324, 337-H(2), 34 PPC P.S. Khipro District Sanghar.

2. Precisely, prosecution case is that due to civil dispute, accused party was annoyed; on 26.01.2014, the complainant, his nephew Mir Hassan and Din Muhammad were available at home. Meanwhile, at 1700 hours, Sajid Hussain raised cries outside the home as such they went outside and saw that accused Asghar Dars having rifle, Fida Dars having rifle, Ishaque Dars having gun, Nawaz Dars and Inayatullah Dars both having repeaters were standing there while Sajid Hussain was found coming by running. The accused Asghar made fire with his rifle on his back side, Sajid fell down. The accused Fida Hussain Dars with his rifle made fire with intention to commit murder upon Shah Jehan alias Bashir, which hit on his head and he also fell down. The remaining accused persons made firing upon them (complainant party) and by making fires went away towards Southern side. Thereafter, they went and saw that Sajid Hussain had expired and blood was oozing from his wound while Bashir was injured and the blood was oozing from his head. After arranging conveyance and informing the police, they brought Sajid Hussain and Shah Jehan at Civil Hospital Khipro where after postmortem, the dead body of

deceased Sajid Hussain was handed over to the relatives and injured Shah Jehan was referred to Hyderabad, subsequently, complainant got registered the FIR.

3. The learned counsel for the applicant *inter alia* contended that applicant is innocent and has been falsely implicated in the case in hand. Albeit specific role is shown in the FIR but the same is doubtful; complainant himself admitted the enmity though the enmity is double edged weapon and in such situation favours the applicant; applicant is behind the bar since more than two years; delay in proceeding with the case is on the shoulder of complainant party not on the accused who is behind the bar since the date of his arrest; complainant himself admitted that he called the police and took the body to hospital therefore, due consultation cannot be ruled out; the presence of the complainant at the place of incident is also doubtful and at bail stage it the right of the applicant and not grace. The statement of witnesses u/s 161 Cr.P.C. and 164 Cr.P.C. are contradictory; prior to this bail application the applicant filed bail before arrest application before the trial Court which was dismissed vide order dated 08.07.2014 and bail application was also filed before this Court which was not pressed as the charge was framed and matter was fixed for evidence; he further argued that at the time of filing of this bail application, the evidence of witnesses has been recorded and there are many contradictions in their evidence. Learned counsel in support of his contentions placed reliance on the cases reported as 2002 P.Cr.L.J. 110, 2005 MLD 1267 and 2008 SCMR 1556.

4. In contra, learned D.P.G. contends that the name of applicant appears in the FIR with specific role of causing murder of the deceased Sajjid Hussain and such incident was witnessed by PWs namely complainant Atta Muhammad, Mir Hassan and Din Muhammad who have fully implicated the accused in the commission of offence and medical evidence also supports the allegations

leveled against the applicants and co-accused in the FIR, therefore, there is sufficient evidence against the accused with the prosecution to connect them in the commission of offence; applicant is not entitled for concession of bail who is involved in a heinous offence and as such his application is liable to be dismissed.

5. I have considered the arguments from both the sides and perused the record.

6. It appears that there are serious allegations against the present applicant for committing murder of deceased Sajid Hussain hence it is *prima facie* not a case of mere presence without any active participation. The postmortem report and ocular evidence are not contradictory or conflicting because the defence does not dispute the cause of death as result of *fire-arm*; the parties are *admittedly* known to each other hence it is also not a case of *mistaken* identity. The delay of 4 and ½ hours in a murder case cannot be only considered as '*deliberation*' particularly where it is claimed by complainant that lodgment of FIR was after post mortem and referral of injured *ahead* which course normally shall require some time. Mere existence of *enmity* alone is not sufficient to earn *release* on bail because it (*enmity*) , being a double edged weapon, cuts either side. The witnesses have implicated the applicant / accused *specifically* in commission of the offence which allegation also find support from other *incriminating* material therefore, permitted *tentative* assessment *prima facie* shows existence of reasonable grounds to believe that applicant /accused is linked with the offence with which he is charged which *does* fall within prohibitory clause of Section 497(i) Cr.PC.

7. As regard the plea of applicant/accused for bail on count of *statutory* delay it would suffice to say that to sustain such plea the criterion is entirely different which requires the accused to establish that delay in conclusion of *trial* was not occasioned because of him or one acting on his behalf which *mainly*

depends with referral to case diaries which the applicant/accused does not refer because conduct of accused is *material* while exercising such discretion. Reference can well be made to the case of Babar Hussain v. State (2016 SCMR 1538) wherein it is held that:

4.We are of the considered view that even after lapse of two years, the conduct of an accused seeking adjournments can be taken note of and bail can be denied by a Court even on the statutory ground.'

8. Be as it may, It is to be noted that after framing of charge trial Court has taken efforts to procure the attendance of witnesses and have examined four witnesses and the advocate of the accused argued that there are material contradictions in their evidence. Again it would be necessary to refer that dealing with bail pleas does not permit the Courts to appreciate the evidence in a manner as is done by trial or appellate Court while deciding the *guilt* or *innocence*. Further, it has been held by the Honourable Apex Court that the Courts have to be very careful in such like cases and see that bail applications are disposed of strictly according to law on merits keeping in view the distinctions between tentative assessment and actual evaluation of evidence. Thus, I am not inclined to discuss the same as it may prejudice the case of either party; suffice it to say that the present accused *prima facie* is not entitled for bail at this *stage* even not on statutory ground. The learned counsel for applicant has relied upon the cases which are totally distinguishable from the facts and circumstances of the case in hand. In the instant case, I am of the view that the applicant is not entitled for bail and the present bail application merits no consideration and is hereby dismissed.

JUDGE

Tufail

