

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

Cr.Bail.Appl.No.S- 04 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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07.11.2016.

Mr. Hidayatullah Abbasi, Advocate for applicant.
Mr. Nazeer Ahmed Bhatti, Advocate for complainant.
Mr. Shahzado Saleem Nahiyoon, A.P.G. for the State.

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Through instant bail application, applicant seeks post arrest bail in Crime No.66/2014 registered at P.S. Kunri u/s 302, 324, 337-H(ii), 337-F(i), 504 PPC.

2. Learned counsel for the applicant contends with regard to offence occurred on 27.06.2014 that two FIRs have been lodged (Crime No.66/2014 and Crime No.67/2014). He contends that the date and time of offence is same in both the FIRs. In FIR No.66/2014, it is alleged that one Nouman alongwith other boys used to play Cricket in the ground adjacent to the village of Khushi Muhammad Arain where in one corolla car Asif alias Gullu came; abused as to why they are playing cricket in that place and then caused one firearm injury rested on abdomen of Nouman. While FIR No.67/2014 shows that place of offence is in fact the land of complainant where the deceased Nouman and other boys, in routine, used to play cricket and there was dispute on game; on fateful day deceased Nouman and others were preparing the pitch who were restrained by the complainant party whereupon brother of deceased and others caused injuries to the applicant, thereafter, applicant was shifted to the hospital. They also damaged the car hence the applicant received eight injuries, seven on his head which are grievous in nature hence this is a case of sudden flare-up as the applicant also received

injuries. FIR was lodged thus lenient view shall be taken as question of *mens-ria* was not there.

3. Counsel for the complainant in FIR No.66/2014 contends that one boy was murdered by the applicant thus he does not deserve the concession of bail. He relied upon 2010 YLR 2125, 2005 YLR 1514, 2015 YLR 571, 2009 P.Cr.L.J 444, 2015 SCMR 655, 2007 SCMR 1798 and 1980 SCMR 203. He also contends that one witness has been examined and the delay is not on the part of complainant. Such arguments are adopted by learned A.P.G.

4. I have heard the respective parties and have also gone through the available material *carefully*.

5. This is a matter of record that two FIRs were registered wherein either parties have come forward with different stories of allegations against each other but time and place of incident is one and same. The complainant of the instant case has not disclosed the details of the injuries, received by the applicant / accused thereby Either side claims to be aggressed upon thereby making the case falling within meaning of further probe because it is almost settled principle of law that in such like cases *normally* bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court after evaluating the evidence. Only *exception* to this settled principle is that it shall not be available for a frivolous cross-version; for determination thereof tentative assessment is *permissible*.

6. The perusal of *two* FIRs (counter-versions) shows that in one FIR one Nouman received a single injury on his abdomen, allegedly caused by the applicant, resulting into death while in another FIR (counter-versions) applicant himself received seven injuries on his head hence *prima facie* it is not a case of *frivolous* counter-case and since place of incident and time in either counter-cases as

one and same is not disputed rather admitted therefore, as per settled principle of law a *genuine* counter-version shall bring the case within meaning of further enquiry thereby entitling the accused for concession of bail. Reference in this regard may well be made to the case of *Liaquat Ali v. State* (2013 SCMR 1527). The applicant / accused is in jail for considerable period and question of aggressor or aggressed upon is yet to be determined by learned trial Court, therefore, following the *dicta* for such like situation, I am inclined to accept the bail plea of the applicant / accused.

7. Under these circumstances, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees three lac) and P.R. Bond in the like amount to the satisfaction of the trial Court. However, trial Court shall conclude the trial within three months with compliance report.

JUDGE

Tufail

