

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.15 of 2017

Date	Order with signature of Judge
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1. For orders on M.A No.87/2017
2. For hearing of bail application.

30.03.2017

Ms. Lali Tabasum Khan, Advocate for the applicant.
Ms. Rahat Ehsan, D.P.G for the State.

NAZAR AKBAR, J:- Applicant/accused Habibullah Chandio son of Mohammad Usman seeks bail after arrest in Crime No.290/2012, registered at P.S. Ferozabad, Karachi, for offences under Sections 302/34 P.P.C.

2. Brief facts of the case are that on 17.5.2012 complainant Naeem Khan son of Tahir Ayoob Khan lodged FIR at Ferozabad Police Station stating therein that on 17.5.2012 the complainant and his brother namely Shahzaib @ Shezi aged about 21 years were present at home. One person namely Chandio who used to run cable business in the area had called brother of complainant outside the house. Thereafter the complainant went to roof of the house. The complainant saw that said Chandio was talking to his brother Shahzaib @ Shezi, when his brother was returning to his house, said Chandio fired Shahzaib @ Shezi with his weapon with intention to murder the brother of complainant, due to which Shahzaib @ Shezi sustained bullet injuries. Thereafter two culprits namely Ali son of Anjum and Aamir @ Pao son of unknown fled away from the scene after making fires upon the brother of complainant. The brother of complainant could not survive and expired. Hence such FIR was lodged.

3. It appears that the bail application was moved on behalf of applicant/accused before the Vth Additional Sessions Judge, Karachi East, the same was rejected by him vide order dated 31.10.2016. Thereafter, applicant/accused approached this Court.

4. I have gone through the record and heard learned counsel for the applicant and the prosecution.

5. The main ground taken by the learned counsel for the applicant is to delay on the part of prosecution. This ground was also taken by the applicant in the trial Court. The other discrepancies shown by the learned counsel for the applicant for the purpose of bail is that even the name of the applicant is not mentioned in the FIR. He claims that he has been arrested as Chandio by caste, though he is not Chandio as may be appeared from NIC which is on record. She has also referred to the evidence of the IO so far recorded in the trial Court on 1st February, 2017.

6. Learned counsel for the State has not been able to satisfy the Court that the delay was not caused by the prosecution. She has, however, insisted that prosecution have some JIT report which she has not even filed. Be that as it may, from the record and arguments I have observed as under:-

- i). The accused was arrested on 26.3.2014 and charge was framed on 14.5.2014.
- ii). The case diaries produced by the applicant confirm that on every date of hearing the prosecution has failed to produce witnesses.
- iii). Diaries further show that even the trial Court has stern action of stopping salary of the official witnesses as may be evident from the diary dated **03.8.2016**, even then PWs have not appeared.

iv). The I.O, who was examined after more than almost three years has categorically stated in his evidence which has also placed on record on the last date of hearing that there is no likelihood of appearance of the complainant and PWs in near future. This statement on oath of the I.O by itself is sufficient to establish that the delay was on the part of prosecution.

7. In view of the above, Applicant/accused Habibullah Chandio son of Muhammad Usman is admitted to bail purely on statutory ground subject to furnishing solvent surety in the sum of Rs.200,000/- (Two Hundred Thousands), and P.R bond in the like amount to the satisfaction of trial Court.

J U D G E

*Ayaz Gul/PA**