

Order sheet

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Cr. B.A. No. S- 361 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
8.2.2018	

For orders on office objection
For hearing

Mr. Mohsin Raza Gopang, advocate for applicant
Mr. Shahzado Saleem Nahiyoona, D.P.G.

OMAR SIAL, J.- Applicant Ramzan has sought post-arrest bail in Crime No. 223 of 2012 registered under sections 302, 324, 337-H(ii), 148 & 149 P.P.C, at the Qazi Ahmed police station in district Shaheed Benazirabad. Earlier, his post-arrest bail application was turned down by the learned 2nd Additional Sessions Judge, Shaheed Benazirabad on 25.4.2017.

2. The F.I.R. in the case was registered by complainant Sono Khan Rahu on 24.8.2012. He reported that he had a dispute with the accused Mengal Fuj for the last one year. The dispute had led to the murder of Mengal's father named Yousuf Fuj. Although a settlement had been reached between them some three to four months ago, Mengal remained angry and was seeking revenge for his father's murder. On 20.8.2012, the complainant along with his cousin Eidan were returning home from a condolence on their motorcycle when at about 10:00 p.m. they were waylaid by Menghal, Sher and Nadir (all three armed with Kalashnikovs), Usman (armed with a repeater gun) and Ramzan (the Applicant in the present bail, armed with a pistol). Mengal, Sher and Nadir fired upon Eidan while Usman and Ramzan fired upon the deceased Eidan as well as upon the complainant. Eidan was hit with bullets all over his body and died. The complainant was hit by bullets in his jaw and arm. The accused then left the scene.

3. I have heard the learned counsel for the Applicant as well as the learned counsel for the complainant and the learned DPG. My observations are as follows:-

- i. The learned counsel for the complainant argued that the Applicant was involved in this case due to ulterior motives on the part of the complainant. This argument at this stage is rather baseless as by the complainant's own admission it was Mengal's father who had been killed by the complainant party. Had it been the other way round, the argument of ulterior motive may have had some weight. Apart from making a blanket statement, the Applicant's counsel has not given even one reason for the existence of this ulterior motive.
- ii. The learned counsel has argued that no injury was caused to either the complainant or his brother by the Applicant; the Applicant is charged only with instigation. With much respect to the learned counsel, the F.I.R. in itself attributes a specific role of firing at the deceased Eidan and injuring the complainant. The post mortem report of the deceased shows a number of bullet injuries all over the body whereas the medical report of the injured also shows bullet injuries on his arm and chin. The learned counsel's argument is thus devoid of any force.
- iii. The learned counsel has argued that the post mortem report of the deceased shows that he was wearing a bosky shirt and a white shalwar whereas the inquest report shows that he was also wearing a undershirt. This ground raised by the learned counsel does not merit an observation. Suffice to say that it is devoid of any force.
- iv. The learned counsel has argued that there is a delay of 4 days in registering the F.I.R entitling the Applicant to bail. The reason for the delay has been given in the F.I.R. itself. The injured and deceased were first taken to a hospital. It was after the burial of the deceased and preliminary medical treatment of the complainant that the complainant came and registered the F.I.R. Even otherwise, this delay would not entitle the Applicant to bail. The impact of this delay will only be decided after evidence is recorded in trial.
- v. The learned counsel has argued that the place of incident is situated more than 15 kms away from the police station and that it was not possible for the police to reach the spot in 15 minutes; that the incident is said to have occurred at 10:00 p.m. however the health clinic shows that the injured/deceased were brought there at 10:00 p.m. too. With respect to the learned counsel, these are matters of deeper appreciation of evidence and the veracity of the same can only be determined after evidence is recorded in trial.
- vi. The learned counsel has argued that the fact that the Applicant was an absconder should not be taken into consideration to deny him bail. The Applicant remained a fugitive from law for over 4 years. Had absconsion been the only ground for bail to be denied to him a lenient view might have been taken. In the circumstances of the case and coupled with the other available evidence, it would be fair to observe that an absconder would lose some of his rights on the ground of absconsion. In any case, not even one reason was given by the learned counsel for the Applicant to justify the 4 years absconsion.
- vii. The learned counsel has argued that the injuries to the complainant were self suffered. With much respect to the learned counsel, the

medical evidence does not align with his view. The record very clearly shows that none of the injuries are self sustained.

- viii. Finally, the learned counsel has argued that the Applicant was carrying a pistol and that no pistol empties were recovered from the scene according to the inquest report. For starters, an inquest report would not be the ideal document to rely on the recovery from the place of incidence. The learned counsel does not have a copy of the memo of recovery to argue on the same. Even if he did, and even if he was correct in his argument, this ground alone would not suffice for the grant of bail. A finding on this issue can only be given after recording of evidence.
- ix. I have considered the fact that according to the medical report of the injured it appears that both the injuries caused to him would fall within the non-prohibitory clause of section 497 Cr.P.C.. However, I have also kept in mind that the Applicant is attributed the role of shooting the injured in his face and arm and also firing at the deceased, prima facie making him liable for an offence u/s 324 P.P.C (with which he is also charged). The bullets causing a lesser injury would not mean that the Applicant was not aware that firing at a person on his face could cause is death. Otherwise also, he is alleged to have contributed to the number of bullets that have hit the deceased. In this particular case, keeping all the circumstances in mind and purely on a tentative assessment, I am not inclined to give the Applicant the benefit of the fact that the injuries allegedly inflicted by him may fall within the non-prohibitory clause of section 497 Cr.P.C.

4. In view of the above, with much respect, I am of the view that the learned counsel has been unable to make out a case for grant of bail and accordingly the bail application is dismissed.

JUDGE