

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-487 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
<i>FOR HEARING.</i>	

28.08.2017.

Mr. Muhammad Akram Rajput, Advocate for applicant.
Mr. Shahid Ahmed Shaikh, D.P.G
None present for the complainant. /

ORDER

ABDUL MALIK GADDI, J:- Having remained un-successful in obtaining his release on bail from the Trial Court in Crime No.06 of 2017 registered under Section 302 and 34 PPC at Police Station Bhit Shah. Now the applicant/accused Nawab *S/o Suhbat Khoso* is seeking his release on bail through the instant bail application.

2. The allegation against the applicant/accused is that he was present at the time and place of incident duly armed with *Lathi*, whereas, the main accused Shahmeer, who was armed with pistol caused firearm injury to deceased Sabir Hussain, who succumbed to the injuries.

3. It is stated by the learned Counsel for the applicant/accused that the applicant/accused is innocent and has been falsely implicated with malafide intention due to enmity with complainant party; that there is no independent witness cited in the case to corroborate the version of the complainant and that the witnesses and mashirs are interested and close relatives of the deceased; that no specific role has been assigned to the present applicant/accused in the commission of the alleged offence; that there is delay in lodging of F.I.R; that during the investigation, the I.O of the case placed the name of the applicant/accused in Column No.2 but the concerned Magistrate did not agree

to it and joined the applicant/accused in this case without assigning any good reasons, therefore, according to him it is the case of two versions, one submitted by the I.O and the other submitted by the complainant party and which version is correct, requires further probe; that the applicant/accused although armed with *Lathi* but he did not use the said lathi in the commission of the alleged offence, therefore, according to the learned Counsel that the common intention of the applicant/accused requires further probe. In support of his arguments, he has relied upon the case of *MUHAMMAD NAVEED V. THE STATE (2014 P.Cr.L.J 1548)*.

4. Conversely, the learned Deputy Prosecutor General has vehemently opposed to the grant of bail to the applicant/accused on the ground that the name of the applicant/accused transpires in the F.I.R and the role of sharing common intention has been assigned to him in the commission of the alleged offence.

5. I have given my anxious thoughts to the contentions raised at bar and have gone through the case papers so available before me.

6. It appears from the record that although the applicant/accused was armed with *Lathi* but he did not use it against the complainant party during the alleged incident. It was co-accused, who was armed with Pistol and fired at deceased Sabir Hussain, who succumbed to the injuries, therefore, at bail stage issue of common intention is normally one of further inquiry unless there are other compelling reasons/circumstances to reach a different conclusion i.e. by way of other pieces of evidence, which could definitely connect the applicant/accused with the crime/inquiry.

7. As observed above, the applicant/accused did not play any active role in the commission of the offence as only the presence of the applicant/accused has

been shown at the place of incident alongwith co-accused, therefore, the bail to the applicant/accused could not be refused on the basis of vicarious liability, unless he is shown through positive evidence to have played any role in the murder of deceased Sabir Hussain. It also appears from the record that after conclusion of the investigation, the Investigating Officer of the case placed the name of the applicant/accused in Column No.2 but the learned Magistrate did not agree to the report of the I.O and joined the applicant/accused in this case.

8. In view of the above, it appears that it is the case of two versions, one submitted by the I.O and the other submitted by the complainant party and which version is correct, requires further probe. Under these circumstances, the applicant/accused has made out his case for grant of bail. Consequently, applicant/accused *Nawab S/o Suhbat Khoso* is admitted on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) and P.R Bond in the like amount to the satisfaction of the Trial Court.

9. Before parting with this order, I would like to make it clear that the observations made in this order are tentative in nature and shall not in any way influence the merits of the case at the trial. Since the matter pertains to the year 2017, therefore, the Trial Court is directed to conclude the trial expeditiously and no un-necessary adjournment shall be granted to either side. In case, the applicant/accused misuse the bail, then the complainant party would be at liberty to file cancellation of bail application before the Trial Court and the Trial Court shall decide the same in accordance with law.

Bail application stands disposed of.

JUDGE