

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

Cr. Bail Application No.S-42 of 2017.

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
04.10.2017.	<p style="text-align: center;">For hearing.</p> <p>Mr. Amjad Ali Sahito, Advocates for the applicants. Mr. Shahid Ahmed Shaikh, D.P.G for the State. Mr. Ahsan Gul Dahri, Advocate for the complainant.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Having remained unsuccessful in obtaining their release on bail from the trial Court in Crime No.360 of 2015, registered under sections 302,120-B, 337-H(ii) and 35, PPC of P.S. Badin, the applicants Tarique s/o Sulleman, Bukhshal s/o Ramzan and Ghulam Mustafa are now seeking their release on bail through instant bail application, while bail of applicant/accused Muhammad Mithal has already been dismissed by this Court as not pressed vide order dated 22.7.2017.</p> <p>2. The facts of the case as per F.I.R. lodged by complainant Ghulam Shabir s/o Illahi Bux Keerio at Police Station, Badin stating therein that Muhammad Aslam was his elder brother, who was Head Master of Primary School. They formed an alliance against `Bhatta` and `Manshiat Mafia` in city of Luwari Sharif and his brother was leader of the alliance. The accused Mithal and others extended threats to finish the alliance, otherwise, they will kill his brother. On 17.12.2015, he was present at city to purchase ration and his brother Muhammad Aslam was returning from home to school on motorcycle when he reached at the shop of Ghulam Mustafa at 0100 hours, the accused Walidad s/o Khan Muhammad and Tarique s/o Sulleman Talpur made straight fire upon Muhammad Aslam with intention to kill him as he was on motorcycle, so fire was missed but from the front side Muhammad Mithal s/o Muhammad Juman Junejo caused an iron rod blow to Muhammad Aslam on his face, who fell down on the earth alongwith motorcycle, accused Dur Muhammad alias Daroo having pistol in his hand, Ismail alias Foji having Kalashnikov in his hand, Buxal, Ghulam Mustafa having pistols</p>

in their hands were standing there. His brother Muhammad Aslam made an attempt to run, accused Dur Muhammad alias Daroo made straight fire upon him, which hit him on his right side of chest, his brother again made an attempt to run, Muhammad Ismail alias Foji made straight fire from his Kalashnikov, which hit him on his right side of back and he fell down. Thereafter, accused persons after making aerial firing went away. They immediately arranged the vehicle and took the injured to Civil Hospital and such information was also given to police, where doctors referred the injured to Karachi as he was serious in condition and on the way, he succumbed to injuries. Thereafter, they brought the dead body at Civil Hospital, Badin where the post mortem of dead body was conducted and after burial ceremonies, he appeared at police station and lodged present F.I.R.

3. It is stated by learned counsel for the applicants/accused that applicants/accused are innocent and victimized due to enmity, besides according to him, there is delay of one day and six hours in lodging the F.I.R. without any plausible explanation. He further submits that the role assigned to applicant/accused Tarique is of in-effective firing, while allegations against the applicants/accused Bukhshal and Ghulam Mustafa are that they were armed with pistols present at the spot made aerial firing after the incident was over. He further submits that applicants/accused have not caused any fatal injuries to deceased and that the case is not a pre-planned murder, as such, common intention cannot be gathered from the F.I.R. He further submits that seven persons have been involved in this case due to enmity. He lastly argued that there are material contradictions in ocular and medical evidence, therefore, they are entitled for concession of bail. In support of his arguments, he has relied upon the cases of MUHAMMAD YASEEN v. STATE [2011 SCMR 905], GHAFUOR KHAN v. ISRAR AHMED [2011 SCMR 1545], SUBEH SADIQ alias SAABO alias KALU v. STATE [2011 SCMR 1543], MUMTAZ HUSSAIN v. STATE [1996 SCMR 1125], MUHAMMAD BOOTA v. STATE [2014 SCMR 1355], ABDUL REHMAN v. STATE [2002 SCMR 1415], MUHAMMAD IRFAN v. STATE [2014 SCMR 1347], WAJID ALI v. STATE [2017 SCMR 116] and MUHAMMAD IRSHAD v. ALLAH DITTA [2017 SCMR 142].

4. Learned D.P.G assisted by learned counsel for the complainant have opposed this bail application on the ground that this is a case of pre-planned murder and the names of the present applicants/accused are appearing in the F.I.R. with specific role of making firing upon complainant party. They further submit that PWs who are eye witnesses of the alleged incident have prima facie supported the case of prosecution in their statements recorded 164, Cr.P.C. They further submit that empties were recovered from the place of incident, which were used in the commission of offence through weapons recovered from accused, prima facie, connects the present applicants/accused in this crime. They also submit that present applicants/accused alongwith co-accused were present at the spot duly armed with weapons for committing the murder of complainant party and according to them, they have collectively fired upon the complainant, so according to them, section 34, PPC is attracted in this case, therefore, according to them, they are not entitled for concession of bail. In support of their contention, they have relied upon the following cases of MULO AHMED v. STATE [2011 MLD 1171], DHANI BUX v. STATE [1989 SCMR 239], TAHIR HASSAN HASHMI v. STATE [1990 SCMR 326], SHAHID v. STATE [2004 SCMR 1018], MUHAMMAD YOUNIS v. STATE [2006 YLR 2988], MUHAMMAD IMRAN v. STATE [2016 SCMR 1401], MUHAMMAD ARSHAD v. MUHAMMAD MUSHTAQ & 5 others [2004 P.Cr.L.J.167], ABDUL HAYEE v. STATE [1996 SCMR 555], GULZAR KHOSO v. STATE [2006 P.Cr.L.J. 1984].

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

6. No doubt, the names of present applicants/accused are appearing in the F.I.R, but as per police papers so made available before me, it has been noticed that the only allegation against the applicant Tarique is that at the time of incident, he was present at the spot duly armed with pistol and he made allegedly fired at the deceased, but the same was missed. During course of the arguments, I have specifically asked the question from the learned D.P.G that whether anybody on behalf of the complainant has received any injury at the hands of applicant/accused Tarique, he replied in negative.

7. As far as the case of other applicants namely Bukhshal and Ghulam Mustafa are concerned, it is suffice to say that as per F.I.R. and police papers, though they were present at the place of incident duly armed with pistols, but they did not use their weapons against the complainant party. However, it reveals from the record that when the alleged incident was over, these applicants/accused have made aerial firing, thus, it appears that present applicants/accused have also not caused any injuries to the deceased or any of the prosecution witnesses during the whole affairs. It transpires that the fatal injuries to the deceased are attributed to co-accused namely Dur Muhammad, Ismail and Mithal, who are behind the bars and their bail applications are not before me. In the circumstances of the case, the question with regard to the vicarious liability of the present applicants/accused is yet to be resolved by the trial Court after proper appreciation of the evidence. It also appears from the record that applicant Tarique was arrested on 21.12.2016, whereas, applicants/accused Bukhshal and Ghulam Mustafa were arrested on 27.12.2015 and they are continuously in custody without any substantial progress in the case by the trial Court.

8. During arguments, learned counsel for the complainant has placed his much emphasis upon the recovery of empties from the place of vardhat and according to him, these empties were used in the commission of offence through weapons of applicants, as such, according to him, common intention of the present applicants/accused with co-accused are very much attracted in this case. Reverting to the contention of learned counsel for complainant, it is suffice to say that mashirnama of place of recovery and vardhat prepared on 17.12.2015 showing that total 14 empties of pistol was recovered, one empty of rifle and four empties of Kalashnikov, but as per record it appears that these empties were sent to the Forensic Science Laboratory (FSL) for opinion on 21.1.2016 after a delay of 23 days, whereas, crime weapons, which is alleged to have been recovered from the applicants on 21.3.2016, were also sent to the said laboratory after a delay of three days, for which, no plausible explanation has been furnished, therefore, it is yet to be determined at the time of trial that whether these empties and the crimes weapons are the same, which were used in the commission of offence or otherwise. In this

respect, I am fortified with the case of MUHAMMAD IRSHAD v. ALLAH DITTA [2017 SCMR 142].

9. During course of arguments, counsel for applicants argued that as per I.O, there was enmity between the parties over Dargah of Luwari Sharif and number of cases are pending against each other in the competent Court of law, however, this fact has been denied by learned counsel for the complainant. This is factual controversy and it is settled proposition of law that while deciding the bail application only tentative assessment on record is to be made and deeper appreciation is to be avoided at bail stage. However, as observed above, no substantial progress has been made in this case by the trial Court, therefore, this ground can properly be decided by the trial Court after recording of evidence of prosecution witnesses. It is stated by the learned counsel for the complainant that in this matter common intention of the present applicants/accused with co-accused to commit the murder of complainant party is apparent from the record, as such, no case of bail is made out and in this regard he has relied upon the case law as referred to above.

10. Be that as it may, it is worthwhile to mention here that the precedents in bail matters are of no help to a party, as it varies from case to case depending upon the facts of each case and the Court has to examine as to whether applicants/accused has made out a case of further inquiry or not. In this respect, I am supported with the cases of MUHAMMAD FAIZ alias BHOORA v. STATE [2015 SCMR 655] and MUHAMMAD IMRAN v. THE STATE [2016 SCMR 1401].

11. It is also argued by the learned counsel for the complainant that applicants/accused are also involved in other criminal cases, which are pending in different Courts, but in this respect, he did not submit any list showing that applicants/accused are involved in other criminal cases. Even otherwise, mere pendency of criminal cases against any of the accused does not *if-so-facto* disentitle the accused for grant of bail, if otherwise they are entitled for bail. Nothing on record that applicants are convicted in any other criminal case and same was maintained upto the level of superior Courts.

12. As observed above that present applicants/accused have neither caused any injuries to the deceased nor any PWs during the whole affairs, therefore, in the present circumstances of the case, this case comes within the ambit of purview of sub-section (2) of Section 497, Cr.P.C. I, accordingly allow this bail application and the applicants/accused Tarique, Bukhshal and Ghulam Mustafa are admitted to bail, subject to their furnishing solvent surety in the sum of Rs.300,000/-(Rupees three lacs) each and PR bond in the like amount, to the satisfaction of trial Court. The case law cited by counsel for complainant has been perused and considered by me, but do not find applicable to the facts and circumstances of the present case and the same are not helpful to him.

13. Since it is a murder case pertains to year 2015 and no substantial progress has been made in this case by the trial Court, therefore, trial Court is directed to proceed with the matter expeditiously and decide the same preferably within a period of four months after receipt of this order and no unnecessarily adjournment shall be granted to either side. Compliance report be submitted to this Court through Additional Registrar.

14. Before parting with this order, it is made clear that observations made herein above, if any, are tentative in nature and shall not affect the merits of the case.

JUDGE.