

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

Cr.Bail.Appln.No.S- 302 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

24.08.2017.

Mr. Badal Gahoti, advocate for applicant.

Mr. Eruam Ahmed, D.D.P.P. for the State.

Mr. Peeral Majeedano, advocate files power on behalf of complainant, taken on record.

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ABDUL MAALIK GADDI, J- Having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.06 of 2017 registered under sections 302, 34 PPC at Police Station Bhit Shah Matiari, now the applicant Shahmir Khoso son of Ghulam Haider is seeking his release on bail through instant bail application.

2. The allegation against applicant/accused in the FIR is that he alongwith co-accused in furtherance of common intention committed murder of Sabir Hussain (brother of complainant) by means of firearm injuries, hence this case.

3. It is stated by learned counsel for applicant/accused that the case against applicant is false and has been registered due to enmity. Besides, according to him the incident took place on 01.02.2017, but FIR lodged on 04.2.2017 after the delay of three days, for which no satisfactory explanation has been furnished, as such according to him on this ground alone false implication of applicant cannot be ruled out; that the statement of the witness namely Ghulam Murtaza was recorded on 06.2.2017 after the delay of six days of FIR and no explanation has been furnished; that during investigation co-accused Nawab declared innocent

and showing his name in Column-2 of the challan, which shows that ocular account of evidence is also doubtful; that mashirnama of place of incident shows that blood stained earth was not recovered by the police at the time of inspection from the venue of offence, which is fatal to the prosecution case. During course of arguments he has also reiterated the same facts and grounds which has urged in the memo of bail application. In the last he prayed for bail in favour of the applicant.

4. Learned D.D.P.P assisted by learned counsel for complainant has vehemently opposed this bail application on the ground that the name of the applicant/accused is appearing in the FIR with specific role as at the time of incident the applicant/accused alongwith co-accused in furtherance of their common intention committed the murder of Shabir Hussain. According to him, the incident has been witnessed by PW Ghulam Murtaza, who has no any inimical with the complainant party. He further submits that the crime weapon has also been recovered on the pointation of applicant/accused.

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

6. It appears from the record that the applicant/accused is nominated in the FIR with specific role, while allegation of straight fire arm injury upon the deceased has been leveled against him. Also, crime weapon i.e. one TT pistol with magazine and four live bullets were recovered from the applicant/accused, which has been used in the commission of offence. It is argued by the learned counsel for applicant/accused that the FIR is delayed for three days; therefore false implication of applicant/accused with due deliberation in this case cannot be ruled out. Reverting to the contention as raised by learned counsel for applicant/accused, it is suffice to say that the delay in lodging of FIR could not

be presumed fatal to the prosecution case, as each case has its own merits and circumstances and mere delay in lodging of FIR alone is not sufficient to claim release on bail, reliance in this respect is placed on a case of Roshan Ali Solangi vs. the State, reported in 2017 MLD (Sindh) 560. As observed above in this case, the applicant/accused is nominated in the FIR with specific role of committing murder of an innocent person and prima facie he connects with the commission of this heinous offence. The learned counsel for applicant/accused has also argued that the statements of the witnesses were recorded on 06.2.2017 after the delay of six days of FIR and blood stained earth was not recovered by the police at the time of inspection from the venue of offence. Reverting to the contention as raised by learned counsel for applicant, it is suffice to say that while deciding bail application, deeper appreciation of evidence is to be avoided. In this respect I am fortified with the case of Muhammad Umar vs the State reported in 2017 P.Cr.L.J 1009 Quetta, which reads as under:-

S.497- bail --- appreciation of evidence---scope—deeper appreciation of record at bail stage could not be gone into—only a tentative assessment was to be made just to find out as to whether the accused persons were prima facie connected with the commission of the alleged offence or not.

7. For what has been discussed above, I am of the opinion that at this stage the applicant/accused has miserably failed to make out the case for grant of bail in his favour, therefore, the instant bail application stands dismissed.

8. Needless to mention here that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

JUDGE