

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

Cr.Bail.Appln.No.S- 607 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA No.5286/17
2. For hearing.

28.08.2017.

Mr. Inam Ali Malik, advocate for applicant.

Mr. Shahid Ahmed Shaikh, D.P.G.

None present for complainant.

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**ABDUL MAALIK GADDI, J-** Having remained unsuccessful in obtaining their release on bail from the trial court in Crime No.19 of 2017 registered under sections 324, 427, 337-F(i), 34 PPC at Police Station Baldia, now the applicants Asam and Abdul Aziz are seeking their release on bail through instant bail application.

2. Concisely the facts of the prosecution case as per FIR are that complainant Abdul Malik Durani lodged FIR at PS Baldia, alleging therein that on 14.06.2017, he alongwith his maternal nephew Abdullah son of Muhammad Usman at about 0700 hours in morning came at link road, Nango Shah near new NHV Highway by pass, where one black and yellow coloured car came in which complainant saw that from the car Aslam Pathan having dagger, Abdul Aziz Pathan having pistol and one unknown duly armed with iron rod. Aslam Pathan raised hackle and caused dagger blow to complainant at his right arm under the shoulder. Thereafter, upon raising hue and cried, accused Abdul Aziz made straight fire upon complainant due to which complainant fell down alongwith motorcycle, whereby such fire shot was hit at the side cover of motorcycle.

Meanwhile, one Shahjahan son of Ameer Muhammad Pathan, who was coming from back side, raised hackle as such accused persons went away in car, hence this FIR.

3. Learned counsel for applicants/accused argued that the case against applicants is false and they have been implicated by the complaint with malafide intention ; that no specific allegation or any specific role is assigned to the applicants/accused even nature of offence as allegation are not explained clearly that what kind of offence has been committed by the applicants/accused ; that there is delay of 15 hours in lodging of FIR without plausible explanation; that there is no eye witness and the case of the prosecution is without any independent or corroborative piece of evidence; that there is allegation as per prosecution case that the applicant Aslam caused dagger blow to the complainant which hit to his right arm and the injury attributed to the applicant No.1 Aslam has been declared by the medico legal officer and falls under Section 337-F(1) PPC for which punishment is only one year and the said offence is bailable, whereas according to him the applicant No.2 Abdul Aziz though allegedly made fire from his pistol but nobody has received any injury, therefore, in view of the above he prays for grant of bail in favour of applicants/accused. He in support of his arguments relied upon case laws reported in 2004 PLD SC 477, PLD 1989 SC 347 and SBLR 2016 Sindh 619.

4. Learned D.P.G has opposed the bail application on the ground that the applicants/accused are nominated in FIR with specific allegations that they with their common intention made straight fire upon the complainant so also caused dagger blow to him, however it was sheer luck of the complainant that he remained safe, therefore, they are not entitled for any concession of bail in their favour.

5. I have given my anxious thought to the contentions raised at bar and have gone through the material so available before me. Admittedly, the name of the present applicants are appearing in FIR and the allegation against them is that at the time of incident the applicants with their common intention made straight fire upon the complainant so also caused dagger blow to him. Glowing upon the whole story as narrated by the complainant in his FIR, it contemplates that at the time of incident applicant No.1 Aslam caused dagger blow to the complainant which hit at his right arm which is non-vital part of the body and the said injury so attributed to the applicant No.1 Aslam has been declared by the medico legal officer as Damiyah under Section 337-F(1) PPC for which punishment is only one year and the said offence is bailable, therefore in such like cases the grant of bail is a rule. However, as per allegation the applicant No.2 Abdul Aziz made straight fire upon the complainant which was missed and if there was an intention to commit murder of complainant, but surprisingly no repetition of fire conducted by the applicants' party, prima facie it appears to have no intention for the same, as such, the applicability of section 324 PPC requires probe, besides the injury attributed to the applicant is on non-vital part of the injured. In addition to this, the Challan had been submitted in the Court, trial had commenced, accused were in custody since the date of their arrest and are no more required for investigation and no useful purpose would be served by keeping the accused in custody in circumstances

6. Looking to the above position and aspect of the same, I am fortified with the case of Muhammad Umar vs the State relied upon by the learned counsel for applicants (supra), which reads as under:-

***Criminal Procedure Code (V of 1898)---***

***“---S. 497---Penal Code (XLV of 1860) Constitution of Pakistan (1973), Art.185(3)---Bail, grant of---Accused, according to medical certificate had allegedly fired upon***

*the outer side; of the right leg's middle part of the injured witness and, prima facie, he appeared to have no intention to fire upon any vital part of the said witness for the purpose of launching murderous assault---Challan had been submitted in the Court, trial had commenced, accused was in custody since the date of his arrest and was no more required for investigation—No useful purpose could be served by keeping the accused in custody in circumstances---Accused was admitted to bail accordingly.”*

7. Beholding the above, at this stage the applicants have made out the case for further inquiry, therefore they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.100,000/= (one lac) and P.R bond in the like amount to the satisfaction of trial Court.

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

**JUDGE**