

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

Cr. Bail application No.S- 423 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

14.09.2017.

Mr. Sajjad Ahmed Chandio Advocate for applicant

Mr. Shahid Shaikh DPG

None present for complainant.

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ABDUL MAALIK GADDI, J: Having remained unsuccessful in obtaining his release on bail from learned trial court in Crime No.28 of 2016 registered U/s 302, 324, 114, 147,148,140,504 PPC at police station Khanoth district Jamshoro, now applicant/accused Allah Bux s/o Imam Bux is seeking his release on bail through instant bail application.

2- Precisely the facts of prosecution case is that on 16.8.2016 at 1400 hours present applicant/accused armed with Repeater was available alongwith other co-accused at the place of incident, whereas co-accused Lal Muhammad and Nooruddin made direct firing upon deceased Sain Bukhsh and Moula Bukhsh, whereas co-accused Gul Muhammad and Sikandar have also made firing and due to this firing two persons lost their lives.

3- It is contended by learned counsel for applicant/accused that complainant got lodged entry No.10 on 16.8.2016 at 1430 hours while FIR was lodged on 16.8.2016 at 2100 hours with the delay of 07-hours without plausible

explanation; that I.O recorded 161 Cr.P.C statement of all alleged witnesses on 20.8.2016 with unexplained delay of 04-days so also got recorded 164 Cr.P.C statements on 02.9.2016 and 22.9.2016; that two accused Ghulam Muhammad Kourejo and Sikandar alias Karo are on bail granted by this court so also by the trial court, hence rule of consistency would apply; that the applicant is innocent

and falsely been implicated: that on 164 Cr.P.C statements all the alleged injured PWs Hasib Hassan, Haji Muharram and Noor Muhammad, no role has been assigned to present applicant/accused except his presence; that there is unexplained delay of 7-years in registration of FIR though the complainant was in touch with police hence it is after through story; that the role of causing fire arm injury to deceased Sain Bukhsh and Moula Bukhsh has been assigned to accused Lal Muhammad and Nooruddin while role of causing alleged injuries to PWs is attributed to accused Baloch; that it is well settled principle of law that the abscondence is of no avail to the prosecution against the accused in absence of other evidence; that according to prosecution case, the present applicant/accused had not caused any injury to the deceased or injured PWs; that provisional medical certificates differ the time with FIR: that the accused is entitled for the concession of bail on the rule of consistency as well as merits as the matter calls for further inquiry.

4- On the other hand learned DPG though opposed this bail applicant, but he is not in a position to controvert the above factual and legal position of the case.

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

6- As per case papers so available before me, it appears that only presence of applicant/accused has been shown alongwith repeater but admittedly the repeater has not been used by applicant/accused in the commission of the offence, therefore, it is yet to be determined at the time of trial whether present applicant/accused has common intention to commit the murder of deceased. It appears from the record that co-accused Ghulam Muhammad and Sikandar who

were armed with weapons made firing have already been granted bail by this court as well as learned trial court vide orders dated 13.02.2017 and 20.2.2017 respectively. It also appears from the record that case of applicant/ accused is on better footing than those who have been granted bail by this court as well as trial court.

7- Learned DPG has conceded that present applicant/accused has not played any active role in the commission of offence. Applicant/ accused is behind the bars since his arrest, challan has been submitted against him and applicant/accused is no more required for investigation.

8- In view of above circumstances, the applicant/accused has made out a case for further inquiry U/s 497(2) Cr.P.C, whether applicant/ accused had any intention to commit murder of deceased or otherwise.

9- In view of above, present bail application is allowed, applicant/ accused namely Allah Bux is admitted to bail after his furnishing solvent surety in the sum of Rs.300,000/- (Rupees three lac only) and PR Bond in the like amount to the satisfaction of learned trial court.

10- It appears from the record that it is the case of double murder, therefore, learned trial court is directed to expeditiously proceed the matter and decide it within the period of four(4) months after receipt of this order. No un-necessary adjournment shall be granted to either sides.

11- Before parting with the order, I would like to make it clear that observations if any, made in this order, is tentative in nature and shall not affect the merits of the case.

JUDGE