

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

Cr. Bail Appln. No.S- 438 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

Date of hearing:	12.03.2019.
Date of order:	12.03.2019.

Mr. Ghulamullah Chang, Advocate for applicant.
Mr. Muhammad Raheem, Advocate for complainant.
Mr. Shawak Rathore, Deputy Prosecutor General

SHAMSUDDIN ABBASI, J:- Applicant seeks bail in Crime No.20/2012 registered at Police Station B-Section Shaheed Benazirabad for offences punishable under Section 302, 324, 337-H(ii), 427, 34, 504 PPC.

2. As per FIR, it is alleged that applicant alongwith co-accused Ali Ghulam came at the place of incident duly armed with pistols and caused firearm injury to the deceased Ghulam Sarwar. It is specifically mentioned in the FIR that he repeated the fires at deceased. Co-accused also made straight fire on injured Ghulam Qadir thereafter they fled away from the scene of offence.

3. It is contended by learned counsel for the applicant that there is delay of one day in lodging of FIR and in background of recorded murderous enmity it cannot be ruled out that FIR has been lodged by the complainant after due deliberation and consultation; that identification on headlight of torch is always treated as a weak piece of evidence; that other source of identification has not been shown in the mashirnama of place of incident; that the applicant is innocent and has falsely been implicated; that as per recovery of pistol is concerned, a separate case was challaned against the applicant and after full dressed trial, he was acquitted in that case of the charge of recovery of pistol;

that F.S.L report is negative; that the applicant is behind the bar since the date of his arrest viz. 21.03.2012 but yet the trial has not been concluded and the delay is not on the part of the applicant/accused hence he has prayed for bail on merits as well as on statutory ground of delay. In support of his contentions, learned counsel has placed reliance on the cases reported as 1. Ehsan Ullah v. The State (2012 SCMR 1137), 2. Muhammad Hussain v. The State (1996 SCMR 73), 3. Shabeer v. The State (2012 SCMR 354), 4. Mazhar Hussain v. The State and another (2012 SCMR 887), 5. Muhammad Yousif v. The State (2000 SCMR 79), 6. Zaigham Ashraf v. The State and others (2016 SCMR 18), 7. Muhammad Aslam v. The State and others (2016 SCMR 1520), 8. Ayaz v. The State (2012 YLR 776), 9. Nawab v. The State (2011 YLR 127), 10. Liaquat Ali v. Bakhsh Ali alias Bakhsho and another (2011 YLR 2731), 11. Zameer v. The State (2012 YLR 477), 12. Nooruddin and another v. The State (2005 MLD 1267) and 13. Juma Khan alias Sajid and another v. The State (2014 YLR 1019).

4. On the other hand, learned D.P.G. assisted by learned counsel for the complainant argued that specific role of firing has been attributed to the applicant/accused which hit to the deceased and resultantly he died; that ocular version as well as medical evidence support the case of prosecution; that empties were recovered from the place of incident; delay in trial is not on the part of complainant but is on the part of accused side; usually adjournment applications are being made and on their request, the matter is being adjourned.

5. I have heard learned counsel for the parties and gone through the material available on record carefully.

6. From perusal of the record, it appears that on the date of incident applicant alongwith co-accused duly armed with pistols came at the place of incident and caused firearm injuries to the deceased Ghulam Sarwar as well as injured Ghulam Qadir with specific role that

the applicant has made two fire shots at deceased which hit him and medical as well as P.Ws supported the case of prosecution. In this case one person also got injured. Ocular evidence is corroborated by medical as well as the circumstantial evidence. Empties were recovered from the place of incident. During investigation, applicant was arrested on 21.03.2012 and at the time of arrest recovery of pistol was affected from possession of the applicant. After usual investigation challan was submitted on 03.03.2012, showing the present applicant as absconder in the challan sheet. This Court has already dismissed the bail application of co-accused Ali Ghulam vide order dated 21.07.2017 on merits as well as on statutory ground and the matter was disposed of with direction to the trial Court to conclude the trial within a period of three months. I have also perused the progress report dated 26.09.2018 submitted by the trial Court which is available in the file which reveals that the matter was being adjourned due to absence of the defence counsel. The relevant Para-4 of the said report is hereby reproduced as under:-

“The careful perusal of diaries clarifies that complainant alongwith mashir Mir Muhammad have been attending the Court, but due to absence of defence counsel and adjournment applications so moved by the accused, his evidence could not be recorded. Even on the date of hearing i.e. 29.08.2018 complainant Shahnawaz and his witness/mashir Mir Muhammad were in attendance alongwith his counsel but case could not be proceeded due to absence of defence counsel, resultantly matter was adjourned, however with warnings to accused to ensure attendance of defence counsel and in case of absence of defence counsel, Court may proceed with the matter in accordance with law.”

Learned counsel for the applicant has also produced certified copies of the case diaries of various dates. Even from perusal of the last diary dated 8th January 2019, shows that learned counsel for the applicant/accused was called absent and due to his absence case was not proceeded.

7. In view of the above, I am of the considered view that the applicant is not entitled for grant of bail on merits as well as on statutory ground of delay. Accordingly, the instant bail application is dismissed. However, once again the learned trial Court is directed to expedite the matter and time is extended to conclude the trial within a period of three (3) months and submit such compliance report to this Court through Additional Registrar.

JUDGE

Tufail/PA