

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

Cr. B.A. No.S- 1394 of 2019

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

- 1. For orders on office objection.
- 2. For hearing of main case.

10.02.2020

Mr. Nusrat Mehmood Gill, Advocate for the Applicant.

Ms. Rameshan Oad, A.P.G.

Mr. Aijaz Ali Chandio, Advocate for complainant, alongwith the complainant.  
=

**ABDUL MAALIK GADDI,J.**- Through this application, Applicant Mumtaz Ali Solangi seeks his admission on post-arrest bail in Crime No.15 of 2019, registered at Police Station Jam Nawaz Ali, under sections 302, 504, 34 PPC. Earlier the plea of post-arrest bail preferred on behalf of the applicant was declined by the learned Additional Sessions Judge-I, Tando Adam by means of order dated 18.10.2019, hence this bail application.

2. As per prosecution case, there is matrimonial dispute between the parties. The allegation against the present applicant, is that on fateful day viz 29.04.2019 at 0545 hours, he alongwith co-accused by riding a motorcycle came at the house of complainant party and while abusing them co-accused Atta Muhammad, who was armed with a pistol, made straight fire from said weapon at Muhammad Moosa which hit him at left side of his abdomen and as a result thereof he succumbed in the way to hospital. Therefore, said F.I.R. was lodged.

3. Learned counsel for the Applicant contended that Applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motive; that no specific role has been assigned to Applicant; that the prosecution story is fabricated, concocted

and managed one; that as per F.I.R, the active role in commission of alleged offence is assigned to co-accused Atta Muhammad whereas only presence of present Applicant at the scene is shown; however, without any active or specific role; therefore, case of Applicant requires further inquiry. In support of his contention, learned counsel for the Applicant placed reliance on the cases of **Zoor Zameen Gul and another V The State** (2019 PCr.LJ Note 66), **Sher Muhammad alias Shero V The State** (2019 MLD 1250) and **Zaigham Ashraf V The State and others** (2016 SCMR 18).

4. Learned A.P.G duly assisted by learned counsel for the complainant, while opposing the bail plea submits that Applicant alongwith co-accused Atta Muhammad and Faiz Muhammad came at the vardat and committed murder of deceased Muhammad Moosa; that Applicant has played active role in commission of offence, therefore, he is not entitled for any concession at this stage.

5. Heard learned counsel for the parties and perused the record available before me. It is an admitted fact that there is a dispute in between the parties over matrimonial affairs. No doubt, name of the applicant is appearing in the FIR with allegation that he along with co-accused Atta Muhammad and Faiz Muhammad while riding a motorcycle came at the vardat where Atta Muhammad by causing firearm injuries to Muhammad Moosa committed his murder, whereas no overt act has been assigned to present applicant. According to the FIR, applicant has merely accompanied with co-accused Atta Muhammad who fired from his pistol and caused fatal injury to deceased Muhammad Moosa. During the course of arguments, I have specifically asked the question from learned APG and learned counsel for complainant whether at the time of incident, present Applicant was armed with any

weapon or had played any active role in commission of alleged offence, they replied in negative.

6. As per police papers, it appears that the allegation of causing fire arm injury to deceased is co-against accused Atta Muhammad who, as per learned A.P.G, is confined in jail. As per F.I.R, present Applicant at the time of commission of alleged offence, has not played any active role.

7. As far as, the question of vicarious liability is concerned, same can be established only after recording of evidence.

8. In view of above, case of the Applicant falls within the ambit of further inquiry as envisaged under sub-section (2) of section 497, Cr.P.C. (further inquiry). Under these circumstances, I am inclined to grant bail to applicant. Accordingly, applicant is granted bail in the aforementioned crime upon furnishing his solvent surety in the sum of Rs.1,00,000/- (Rupees one hundred thousand) and PR bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that the observation made in this order is tentative in nature and shall not affect the merits of the case. It is made clear that in case if during proceeding the applicant misuses such concession of bail, then trial Court would be competent to cancel the same without any notice. However, the Court is directed to proceed with the matter expeditiously and decide the same preferably within a period of 03 months after receipt of this Order. No unnecessary adjournment shall be granted to either side. Compliance report be submitted to this Court through Additional Registrar.

JUDGE