

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

Cr.Bail.Appl.No.S- 1140 of 2013

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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12.09.2014.

Mr. Shahnawaz Brohi, Advocate for applicant.  
Mr. Mushtaque Ahmed Abbasi, D.D.P.P.  
Mr. Mohsin Raza Gopang, Advocate for complainant.

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**ABDUL MAALIK GADDI, J:-** Having remained unsuccessful in obtaining his release on bail in Crime No.130/2013 registered u/s 324, 34 PPC at Police Station B-Section, Nawabshah, the applicant Muhammad Ali is seeking his release on bail through instant bail application.

2. Facts necessary for disposal of this bail application are that complainant Mst. Qaisran lodged FIR at P.S. B-Section Nawabshah on 17.10.2013, alleging therein that Abdul Khalique Khoso resided adjacent to their house. Abdul Khalique had entered into altercation with her son Arjun about 2/3 days back. On 16.10.2013, complainant, her son Arjun and Vishnoo had gone for purchasing milk. At about 7-30 p.m, when they reached in the street of Gajra Wah, they saw accused Abdul Khalique, Abdul Jabbar and Muhammad Ali having pistols in their hands, came there and asked Arjun that he had entered into altercation with them and now they would not spare him. Saying so, accused Abdul Khalique then fired upon Arjun which hit him on his head

and he fell down. Complainant party made cries and on their cries and sound of fire, the neighbourers came and accused persons then ran away.

3. It is contended by learned counsel for the applicant that applicant is innocent and has been falsely implicated in the case in hand due to enmity. He has further contended that there is a delay of one day in lodging the FIR, which has not plausibly been explained by the complainant party; no role / part or overt act has been assigned to the present applicant / accused and simply his presence has been shown at the place of incident. According to him, present applicant has been involved in this case as he is nephew of main accused. It is further submitted that applicant was arrested on 02.11.2013, nothing was recorded from his possession and since the date of his arrest, he is continuously in jail. Learned counsel for applicant while praying for grant of bail has relied upon the case of Ahsan and 2 others v. The State (2012 MLD 723).

4. Conversely, learned D.D.P.P. appearing on behalf of the State, assisted by learned counsel for the complainant, has opposed the grant of bail to the accused on the ground that he is nominated in FIR and has been assigned the role of common intention with co-accused Abdul Khaliq who caused firearm injury to PW-Arjun which hit him on his head. He has further argued that accused is prima facie involved in the commission of offence and he has shared the common intention with co-accused and vicarious liability is very much attracted in the instant case, therefore, he does not deserve any concession of bail. In support of his contentions, learned counsel has relied upon the case of Mulo Ahmed v. The State (2011 MLD 1171) and Ali Muhammkad and 3 others v. The State (2003 P.Cr.L.J 938).

5. Heard parties advocates and perused the record.

6. From the perusal of record, it appears that applicant Muhammad Ali was allegedly present at the scene of offence armed with pistol but no overt act has been attributed to him. The main allegation of causing injury to the injured Arjun is attributed to co-accused Abdul Khalique who has made direct firing upon the injured on his head. Here in this case, except the role of presence of present applicant with pistol, no overt act has been attributed to him. It is yet to be determined at the time of trial that the provision of Section 34 PPC would be attracted in the circumstances of the case or not, as such the case of applicant requires further probe. Perusal of the record further reveals that applicant was arrested on 02.11.2013 in presence of mashirs Natho and Tash Kumar but admittedly nothing was recovered from his possession and he is continuously in jail since the date of his arrest.

7. I have also gone through the case of Ahsan and 2 others (supra), cited by learned counsel for the applicant, in which the bail was granted to accused on the ground that though the accused was present at the place of incident but he did not play any active role in the commission of offence, therefore, I while relying this case law which is almost identical to the facts and circumstances of the case, hold that the applicant / accused has succeeded to make out a case for further inquiry. Accordingly, I admit the applicant on bail after his furnishing solvent surety in the sum of Rs.200,000/- (Two lac) and P.R. Bond in the like amount to the satisfaction of the learned trial Court. The case law cited by learned counsel for the complainant has been perused and found distinguishable to the facts and circumstances of the case in hand.

8. Since the matter pertains to 2013, learned trial Court is directed to proceed with the matter expeditiously and dispose of the same within a period of 06 months after receipt of copy of this order, under intimation to this Court through Additional Registrar. If the applicant who has been granted bail today, avoid to proceed with the case, the complainant shall be free to move application for cancellation of bail before the learned trial Court.

JUDGE

Tufail