

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 607 of 2020

Date	Order with Signature of the Judge
For hearing of bail application.	
Heard on	: 11.08.2020
Decided on	: 11.08.2020
For Applicant	: M/s. Jameel Ahmed Shah & Waqas Ahmed Shah, Advocates.
For State	: Mr. Abdul Qadeer Memon, D.P.G. alongwith IO ASI Rasool Bux
For Complainant	: M/s. Shabir Ahmed Kumbhar & Muhammad Nawaz Kumbhar, Advocates a/w complainant.

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**Kausar Sultana Hussain, J.**:- This bail application is filed on behalf of the applicant / accused Muhammad Mureed son of Ghulam Qadir, involved in case FIR No. 102 of 2019, police Station Thatta for an offence under Section 302, 114, 504/34 PPC. The applicant/accused preferred first bail application before the Court of learned Sessions Judge, Thatta, which was dismissed on merits vide order dated 09.07.2019, thereafter the applicant/accused had assailed that order by moving a bail application before this Court, which was also dismissed vide order dated 02-09-2019. After that the learned counsel for the applicant/accused had again moved bail application before the learned trial Court and the same was again dismissed, vide order dated 01.04.2020. The applicant/accused filed the present bail application after that before this Court on three fresh grounds i.e. i) FSL report of crime weapon dated 20.6.2019, (ii) examination of three eye witnesses by the prosecution and (iii) COVID-19.

2. Succinct contents of FIR discloses that on 23.05.2019 at about 1400 hours, complainant Naseer Brohi lodged an FIR at Police Station Thatta, stating therein that he is residing at the given address. His brother Saifal Brohi aged about 56 years was head clerk in Education

Department and posted at High School Chattochand and used to look after the lands of Din Muhammad Brohi in Deh Old Kotri. There was land of Muhammad Brohi and Hameer Brohi near the land of Din Muhammad Brohi. There was dispute between the parties over the demarcation of land due to floods and it was settled between them that after sloughing land same will be demarcated, so that water of the land belonged to his brother could not flow towards the land of Hameer Brohi. On 21.5.2019 the complainant alongwith Ameer Ali Brohi and Jan Muhammad Brohi was sitting in front of their house, whereas his deceased brother Saifal was watering the land. It was about 0615 hours, when accused Hameer and Moharram both son of Alah Rakhio Brohi, Mureed son of Ghulam Qadir Brohi all armed with guns came there and abused and warned his brother Saifal by hurling that since they had violated the settlement regarding flowing water towards their land, hence they would not spare him, then his brother Saifal tried to refrain them from abusing him on which accused Moharram instigated the remaining accused present there by saying that "not to spare the Saifal and kill him". On such instigation of Moharram, the accused Hameer Brohi fired from his gun at Saifal, which hit on his right shoulder and Muhammad Mureed also fired from his gun at Saifal, which hit on beneath the right knee of his leg. Due to receiving such injures his brother fell down, the complainant and others run towards his brother Saifal, meanwhile the accused managed good to escape from there. Thereafter, he arranged for vehicle and brought his injured brother Saifal to Civil Hospital Makli, where he was declared dead. After observing formalities, the dead body was handed over to him and he brought the dead body of deceased Saifal to his native village Nasarpur for burial. After completion of his funeral ceremonies, he lodged the instant FIR.

3. I have heard the learned counsel for the applicant/accused and learned DPG with the assistance of learned counsel for the complainant and have also gone through the case laws relied upon by both the sides.

4. Learned counsel for the applicant/accused in his second bail application before this court first time agitated the ground of FSL report of crime weapon dated 20.6.2019 and argued that result of FSL report shows that the applicant/accused has not fired upon the deceased Saifal as the empties collected from the crime scene were matched with the arm allegedly recovered from the possession of co-accused Hameer Brohi hence, the matter requires further inquiry and he prayed for release of the applicant/accused on bail. The learned counsel for the applicant/accused did not put much emphasis on remaining two fresh grounds as the second ground for bail is related with the discussion of merits of the case and third ground (Covid-19) is no ground for grant of bail. In support of his arguments, the learned counsel for the applicant/accused relied upon the case laws reported in (i) PLJ 2004 Cr.C. (Karachi 58 (Circuit Court Larkana) (Re-Shabbir and another v. State), (ii) 2020 P.Cr.L.J Note 64 (Sindh) (Re-Mir Javed Iqbal Khan Jamali v. The State), (iii) 1995 P.Cr.L.J 544 Lahore (Re-Asghar Masih and another v. The State) and (iv) 2020 YLR Note 40 (Re-Suhail Ahmed Agha v. The State) and one unreported judgment of Hon'ble Supreme Court of Pakistan passed in Criminal Petition No. 72-K of 2019.

5. Conversely, learned D.P.G with the assistance of learned counsel for the complainant has strongly opposed for grant of second bail application to the applicant/accused on the ground that FSL report dated 20.6.2019 was already available on record at the time of filing all previous bail applications by the learned counsel for the applicant/accused, but the learned counsel for the applicant/accused had never agitated such ground earlier either before the learned trial Court or before this Court and now the case is at its advance stage as the

prosecution has already examined three material eye witnesses and four witnesses are to be examined before the learned trial Court out of them three witnesses are officials. He further argued that at this stage the learned counsel for the applicant/accused has filed the instant bail application of the applicant/accused on the ground of FSL report. He further argued that, if merits of the FSL report is to be discussed in the order of this bail application, it may prejudice the case of the prosecution at trial stage, as such the applicant/accused is not entitled for grant of bail at this stage. The learned DPG stated that the matter is being proceeded before the Model Court and now it is fixed for evidence on 02.9.2020. In support of his arguments, he has relied upon the case laws reported in 2010 MLD 212 (Karachi), 1991 SCMR 60 and PLD 2004 S.C. 822, placitum-D, on the point that deeper appreciation is not permissible at bail stage. It has been held in 1991 SCMR 60 (Re-Ghulam Mehdi v. The State) that: *“In the presence of direct evidence much weight could not be attached to opinion of Ballistic Expert.”*

6. After hearing arguments and while perusing of the record, it reveals that the learned counsel for the applicant/accused namely Muhammad Mureed in his all previous bail applications took many grounds for release of applicant/accused on bail but he never based on FSL report of crime weapon involved in this case as one of the ground for bail. The applicant/accused had filed this second bail application before this Court, whereby he brought the subject FSL report dated 20.6.2019 on record as first time. According to the learned counsel for the applicant/accused this FSL report exonerated the applicant/accused, as the double Barrel Gun allegedly used in the crime does not belong to him. The learned counsel for the applicant/accused sufficed from the point that since the shot gun does not belong to the applicant/accused, therefore, he may be released on bail, as his matter requires further inquiry.

7. While perusing the said FSL report it reveals that the required DBBL shot gun of 12 bore as well as two marked empties (C-1 & C-2) were sent to the Forensic Science Laboratory (FSL) on 03.06.2019 and its report received to the I.O on 20-6-2019, but the learned counsel for the applicant/accused who moved bail applications for applicant/accused repeatedly after that report has never taken this ground in any bail application, while the FSL report was very much available on record at the time of filing of all previous bail applications either before the learned trial Court or this Court therefore, in this second bail application he cannot agitate this ground by showing this FSL report as fresh ground for bail.

8. The trial of the instant matter is at advance stage as discussed above and fixed on 02.09.2020 before the learned trial Court for recording evidence of remaining four prosecution witnesses. So far as the lacunas pointed out by the learned counsel of applicant/accused is concerned, suffice it to say that at bail stage only tentative assessment is to be made and deeper appreciation of evidence is not permissible. In case the evidence so recorded by the prosecution is taken into consideration in depth it will prejudice the rights of either party which is also not permissible at bail stage.

9. So far as the case law relied on by the learned counsel for applicant/accused is concerned, suffice it to say that same are not squarely applicable in the present case as the instant bail application has been filed on three grounds only as mentioned in para-1 of this order but the judgment relied upon are on different grounds, such as delay in trial and accused cannot be kept in jail merely because his name is mentioned in FIR, delay in lodging FIR, etc.

10. In the above circumstances, the instant bail application of the applicant/accused is hereby rejected. Since the matter has sufficiently

been proceeded by the learned trial Court by examining three material eye witnesses and now as per prosecution four witnesses are to be examined, therefore, the prosecution is directed to produce the remaining four witnesses including I.O of the case before the learned trial Court on 02.09.2020 after issuing notices to them and the learned Defence Counsel is also directed to complete their cross-examination on the same day. The learned trial Court is further directed to dispose of the matter within 30 days' time from the date of receipt of this order.

11. The observations recorded above are tentative in nature, therefore, trial Court shall not be influenced with them in any manner whatsoever.

12. The above are the reasons for dismissal of bail application dated **11.08.2020**, of the applicant / accused.

Faheem/PA

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