

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr.B.A.No.S-726 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

23.10.2019.

Mr. Abdul Sattar Sarki, Advocate for applicant.
Ms. Rameshan Oad, Assistant Prosecutor General Sindh.
Mr. Aakash Ali Rind, Advocate for the complainant.

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Irshad Ali Shah J; It is alleged that the applicant with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object caused fire shot injuries to PW Muhammad Bux on left side of his frontal region with intention to commit his murder and then went away by insulting complainant Abdul Rehman and others, for that the present case was registered.

2. The applicant on having been refused post arrest bail by learned Sessions Judge, Tando Muhammad Khan has sought for the same from this court by way of instant application under section 497 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party in order to satisfy its matrimonial dispute and old enmity with him; the FIR has been lodged with delay of about five hours; there is counter version of the incident; all the injuries sustained by the injured are eitherailable or not falling within prohibitory clause of

section 497 Cr.P.C; co-accused Mir Muhammad and Aijaz Ali have already been admitted to bail by learned trial Court and complainant and PWs are related interse. By contending so, he sought for release of the applicant on bail on point of further enquiry. In support of his contention he relied upon cases of *Awal Khan and 7 others vs The State through AG-KPK and another (2017 SCMR 538)* and *Zahoor Ahmed vs The State and another (2018 P.Cr.L.J Note 169)*.

4. It is contended by learned A.P.G. for the State and learned counsel for the complainant that the applicant is neither innocent nor is involved in this case falsely; the delay in lodgment of the FIR is explained plausibly; the applicant's party has attempted to create a counter version to the incident after having recourse u/s 22-A & B Cr.P.C otherwise, there is no counter version of the incident; the role of co-accused Aijaz and Mir Muhammad is different to that of the applicant and on arrest from the applicant has been secured the crime weapon which has been found to be similar with the empties secured from the place of incident. By contending so, they sought for dismissal of the instant Cr. Bail Application as the applicant is not entitled for his release on bail.

5. I have considered the above arguments and perused the record.

6. The name of the applicant is appearing in the FIR with specific allegation that he with rest of the culprits went over to the complainant party and then they caused gunshot injuries to PWs Muhammad Bux on left side of his frontal region, thereby he sustained impairment of one of

his eye. The specific role of causing of gunshot injuries to PW Muhammad Bux which are numbered to be 18 is attributed to the applicant and on arrest from him has been secured the gun which he allegedly used in commission of incident and same has been found similar with the empties secured from the place of incident. In that situation, it would be premature to say that the applicant being innocent has been involved in this case falsely by the complainant party. The enmity between the parties may be there but it may not be reason for false involvement of the applicant in this case at the cost of injuries to the injured on his face being vital part of his body. No doubt there is delay of about five hours in lodgment of FIR but such delay is explained in FIR itself. Delay in lodgment of FIR even otherwise could not be resolved by this Court at this stage. The role attributed to co-accused Aijaz Ali and Mir Muhammad is distinguishable to that of the applicant. The FIR which is said to be of counter version of the present incident has been lodged by the applicant's party after having a recourse u/s 22-A & B Cr.P.C. In that situation, the contention of learned A.P.G for the State and learned counsel for the complainant that the applicant's party has attempted to create counter version of incident could not be lost sight of. The complainant and PWs may be related interse but their relationship is not enough to disbelieve them at this stage, they are appearing to be natural witness to the incident. There appear reasonable grounds to believe that the applicant is guilty of the offence with which he is charged.

7. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. In case of ***Awal Khan and 7 others*** (supra), there was no recovery of crime weapon. In the instant case there is recovery of crime weapon from the applicant. In case of ***Zahoor Ahmed*** (supra) there were two version of the incident. In the instant matter there is single version of the incident.

8. In view of the facts and reason discussed above, it could be concluded safely that the applicant is not found entitled to be released on bail. Consequently, his bail application is dismissed with direction to learned trial Court to expedite disposal of the case preferably within three months after receipt of copy of this order.

9. Needless to state, that the observation recorded above is tentative in nature, same may not affect the case of either of the party at trial.

JUDGE

Ahmed/Pa