

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

Criminal Bail Application No.S-591 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

16.11.2020.

Mr. Fazal Hussain Jamali, Advocate for applicant.

Ms. Sobia Bhatti, A.P.G for the State.

Mr. Safdar Ali Charan, Advocate along-with the complainant.

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ORDER

Irshad Ali Shah J:- It is alleged that applicants with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object not only committed qatl-i-amd of Ali Asghar but caused fire shot injuries to PWs Mumtaz Hussain, Rameez, baby Heer Bano and boy Hasnain, who were passing through the place of incident at the time of incident. Subsequently, baby Heer Bano also died of her injuries, for that present case was registered.

2. The applicant on having been refused post arrest bail by learned Additional Sessions Judge-IV, Dadu have sought for the same from this court by way of making 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 old enmity with them; there is delay of more than one day in lodgment of F.I.R; no injury to the injured or to the deceased is attributed to the applicant specifically; the complainant and PWs are related inter se, therefore, the applicant is entitled to be released on bail on point of further inquiry. In support of his contention he relied upon cases of In support of his

contention he relied upon cases of *Shafi Muhammad vs The State (2004 P Cr. LJ 2002)* and *Ali Hassan vs The State (2011 M L D 700)*.

4. Learned A.P.G. for the State and learned counsel for the complainant have opposed to the grant of bail to the applicant by contending that the applicant has committed murder of the deceased in a very brutal manner; the firing upon the deceased was indiscriminate which is attributed to the applicant and on arrest from him has been secured incriminating pistol, therefore, he is not entitled to the grant of bail. In support of their contention, they have relied upon cases of *Mohsin Ali vs The State and others (2016 SCMR 1529)*, *Safiullah and 13 others vs The State (2014 P.Cr.L.J 559)* and *Abdul Latif Vs. The State and another Vs. The State and another (2015 P Cr. LJ 1083)*.

5. By rebutting the above contention, it is contended by learned counsel for the applicant that the recovery of the crime weapon has been made from the applicant on the fifth day of arrest, which is doubtful.

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

7. The name of the applicant is appearing in the F.I.R with specific allegation that he with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object went over to the complainant party and fired at the deceased Ali Asghar as a result thereof not only he lost his life but the passerby as are named above sustained fire shot injuries, one amongst them namely baby Heer Bano too has died on account of said injuries. In that situation, it would be premature to say that the applicant being innocent has been involved falsely in this case by the complainant party. Enmity between the parties may be there but it may not be a reason for false involvement of the applicant in this case at the cost of lives of innocent persons. On arrest from the applicant has been secured the crime weapon which has been found similar with the empties secured from the place of incident, such recovery could not be doubted at this stage only for the reason

that it is effected on the fifth day of arrest of the applicant. No doubt there is delay of about one day in lodgment of the F.I.R but it is explained in the F.I.R itself. The delay in lodgment of the F.I.R, even otherwise could not resolved by this Court at this stage. The complainant and his witnesses may be related interse but their relationship is not enough to disbelieve them at this stage. There appear reasonable grounds to believe that the applicant is guilty of the offence, with which he is charged.

8. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. In case of *Shafi Muhammad* (supra) the fatal injury was not attributed to the applicant. In the instant case all the injuries sustained by the deceased have been found collectively to be sufficient for causing death of the deceased. In case of *Ali Hassan* (supra) no injury was caused by the applicants. In the instant case injuries to the deceased was caused by the applicant by fire shot.

9. 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.

10. 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

Muhammad Danish Steno*