

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

Criminal Bail Application No.S-270 of 2021

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

06.08.2021

Mian Taj Muhammad Keerio, Advocate for the applicant.
Mr. Fayaz Hussain Sabki, A.P.G for the State.

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ORDER

Irshad Ali Shah J:- It is alleged that the applicant with the rest of the culprits in furtherance of their common intention committed murder of Imdad Ali by causing him fire shot injuries, for that the present case was registered.

2. The applicant on having been refused post arrest bail by learned 5th Additional Sessions Judge, Shaheed Benazirabad, has sought for the same from this Court by making instant bail 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 in order to satisfy his old enmity with him; the FIR of the incident has been lodged with delay of about ten hours; co-accused Afaque has already been admitted to bail by this Court and very F.I.R on investigation was recommended by the police to be disposed of under "A-class". By contending so, he sought for release of the applicant on bail on point of further enquiry and consistency. In support of his contention, he relied upon the cases of *Muhammad*

Hanif Vs. The State [2019 SCMR 2029] and *Muhammad Shafi and others Vs. The State and others [2016 SCMR 1593]*

4. Learned A.P.G for the State has opposed to release of the applicant on bail by contending that he has actively participated in commission of incident by causing fire shot injury to the deceased; his role is different to that of co-accused Afaque; the delay in lodgment of F.I.R is explained in F.I.R itself; the opinion of the police has got no binding effect upon the Courts and case now is proceeding before learned Trial Court.

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

6. The name of the applicant is appearing in F.I.R with specific allegation that he committed death of the deceased by causing him fire shot injury on his head. Whatever is stated by the complainant in his F.I.R takes support from the statements of his witnesses made by them under section 161 Cr.P.C. In that situation, it would be premature to say that the applicant being innocent has been involved in this case falsely by the complainant. It is settled by now that the opinion of the police has got no binding effect upon the Courts, it is why the cognizance of the offence has been taken by the Magistrate having jurisdiction on the basis of material brought before him and case now is proceeding before the Court having jurisdiction. No effective role in commission of incident was attributed to co-accused Afaque, it is why he was admitted to bail by this Court by making a conclusion that his case is calling for further inquiry. The role attributed to the applicant in commission of incident is quite

distinguishable to that of co-accused Afaque. He as said above has been attributed the role of committing death of the deceased by causing him fire shot injury on his head. There appear reasonable grounds to believe that the applicant is guilty of the offence for which he has been charged.

7. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. In case of Muhammad Hanif (*supra*) it was held by Hon'ble Apex Court that the Court cannot insist upon the police to submit challan against particular person. In the instant matter the cognizance of the offence has been taken by the Magistrate having jurisdiction on the basis of material brought before him. There was no direction by learned Trial Magistrate for submitting a challan against the particular person. In case of Muhammad Shafi (*supra*) the accused were admitted to bail by Hon'ble Apex Court for the reason that they were found empty handed at the time of incident and had caused no injury to anyone. In the instant case, the applicant is attributed role of committing death of the deceased by causing him fire shot injury on his head.

8. In view of above, it is concluded that the applicant is not found entitled for his release on bail on point of further inquiry or consistency; consequently, his bail application is dismissed with direction to learned Trial Court to expedite the disposal of the case of the applicant preferably within three (03) months after receipt of copy of this order.

JUDGE