ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI,

Crl. Bail Application No. 75 of 2019.

DATE ORDER WITH SIGNATURE OF JUDGE

Applicant: Ghulam Hyder @ Ghazi Khan.
Through M/s. Muhammad Ashraf Kazi and Irshad Ahmed Jatoi advocates.

Complainant: through: Mr. Shabbir Ahmed Kumbhar, advocate

The State : Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh.

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Date of hearing: 25.03.2019.
Date of order: ___.04.2019

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Salahuddin Panhwar, J:- Through instant bail application, applicant Ghulam Hyder @ Ghazi Khan seeks post arrest bail in Crime No. 41 of 2016 registered at Police Station Thatta, under Sections 302, 324, 147, 148, 149, 504, 506/2 and 337H2, PPC.

2. Relevant, facts of the case are that complainant lodged FIR stating that on 23.02.2016 at about 08:00 p.m. Sahib Dino informed him that they were present at vegetable shop of Zakria and it was about 7:45 p.m. when Abdul Sattar alias Saddar, Ghulam Hyder alias Ghazi Khan, Nooru Khushik, , Zaheer Khushik, Abdul Latif and Ghulam Qadir having pistols in their hand came there, out of them Ghulam Qadir and Ghulam Hyder used abusive language when they restrained them, both of them caused straight fires at Zakaria from their respective pistols, which hit on his chest. On hearing fire shots Haroon Khushik and others came there and intervened. Meanwhile, Abdul Sattar, Abdul Latif, Nooru and Zaheer caused straight fires from their respective pistols at Haroon, Allah Bux and Yahya, resultantly they sustained fire arm injuries on different parts of their bodies and thereafter all of them went away extending threats and making aerial firing. On receipt of information, complainant and other people of village rushed at 103-Mori and then took the injured persons to Civil Hospital Makli, where injured Zakria succumbed to his injuries. The doctors referred the injured to Karachi for treatment while the complainant brought the dead body of deceased Zakriya for performing funeral ceremony and then lodged the FIR.

3. Learned counsel for the applicant, *inter-alia,* contended that the FIR is delayed about 21 hours without furnishing any plausible explanation; that the incident is shown to have taken place at 07:45 p.m. while the postmortem report shows the time of receiving dead body as 07:30 p.m. i.e. 15 minutes prior to the alleged occurrence; that the M.L. Certificates of injured Haroon, Allah Bux and Yahya show the time of their arrival at Civil Hospital, Thatta @ Makli as 08:00 p.m. and also depicts the time of incident as 07:00 p.m., thus, rendered the whole case of the prosecution extremely doubtful; that the medical evidence contradicts the ocular version, which makes the case of the prosecution as one of the further inquiry; that the empties alleged to have been recovered from the scene of occurrence have not been matched as opined by the ballistic expert; that the entire story is false, fabricated and concocted one; that the complainant party has suppressed and distorted the facts deliberately that co-accused Sadar-ud-Din and absconding accused Zaheer Khushik received firearm injuries at the hands of complainant party; that the allegations are general in nature and no specific injury or role has been attributed to any of the accused; that the witnesses are inimical to accused and they have falsely implicated the applicant with the commission of offence. Learned counsel lastly submitted that the applicant is behind the bars for a considerable period, hence prayed for granting him bail. In support of his submissions, he has relied upon 2002 P.Cr. L.J 494 and PLD 1996 SC 241.

4. In contra, learned counsel for complainant, while opposing the grant of bail, contended that earlier applications of the applicant filed for pre-arrest bail as well as post arrest bail have been declined by the trial Court on merits and the present application has been filed without furnishing any cogent ground, hence the same is liable to be dismissed on this sole ground; that the charge has been framed on 18.09.2017 and up till now six witnesses have been examined by the prosecution, which shows the efforts taken by the trial Court for expeditious disposal of the case, whereas the accused party is trying to linger on the matter by way of repeating bail applications on one pretext or the other; that the applicant is nominated in the FIR attributing specific role of causing firearm injury to deceased Zakriya Khushik and the witnesses in their respective statements have fully implicated him with the commission of the offence; that there is recovery of incriminating weapon from the applicant and the medical evidence supports the ocular account, hence the applicant is not entitled for

concession of bail. In support of his submissions, he placed reliance on 1990 SCMR 607. 1990 SCMR 326, 2000 MLD 1033, 2006 PCLJ 1256 and 2003 SCMR 64.

5. Learned DPG while adopting the arguments made by learned counsel for the complainant prayed for dismissal of instant bail application

6. It is now well-settled law that at the bail stage only a bird eye-view of evidence is taken into consideration while deeper appreciation of evidence is not permissible, therefore, accused is required to establish a case of ***further inquiry***. Of course, if it appears to the Court at any stage of trial that there are no reasonable grounds for believing that the accused had committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail. While exercising such discretion, the Courts must always satisfy its conscious between existence or non-existence of **'reasonable grounds'** to believe link or otherwise of accused with offence, particularly when offence is falling within prohibitory clause. In every criminal case some scope for further inquiry into the guilt of accused exists, but on that consideration alone it cannot be claimed by the accused as a matter of right that he is entitled to bail. For bringing the case in the ambit of further inquiry, there must be some *prima facie* evidence, which on the tentative assessment, are sufficient to create doubt with respect to involvement of accused in the crime. In Iqbal Hussain v. Abdul Sattar & another (PLD 1990 SC 758) while setting aside the bail granting order of the High Court, the court referred to the tendency in courts to misconstrue the concept of further enquiry and held as follows:

> *'It may straightway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C which, with respect, has not been correctly understood by the learned Judge in the High Court nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element, as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the police or by the court in respect of the merits of the case. The learned Judge in this case avoided rendering such prima facie opinion on merits as it is mentioned in subsection (2) of section 497 Cr.P.C, and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C, the respondent was not entitled to bail thereunder as of right.*

Each case has its own foundation of facts, therefore, it is not possible to put each and every case in the cradle of further inquiry to provide relief to accused by

releasing on bail merely by repeating words of ***further inquiry*** or raising ***presumptions*** and ***surmises*** but such consideration must remain confined to ***tentative assessment*** of available material only.

7. Record reflects that the applicant alongwith his companions came at the vegetable shop of deceased Zakaria, situated at 103-Mori, duly armed with sophisticated weapons, and during exchange of hot words he and co-accused Ghulam Qadir targeted deceased by making straight fires with their respective pistols, who succumbed to his injuries and died at hospital. The M.L. Certificate shows three injuries on the person of the deceased and the cause of death has been declared as "hemorrhagic shock" in result of firearm. The medical evidence, *prima facie,* supports the ocular account / allegation and even otherwise a part difference/conflict between ocular account and medical evidence is not sufficient for earning bail. Reference may well be made to the case of *Mohsin Ali v. State & Ors* 2016 SCMR 1529 wherein it is observed as:-

> "2….It may be true that the injury found on the back of the neck of Muhammad Ikram found to be an exit wound but **it cannot be lost sight of that the injury attributed to the petitioner on the back of the deceased's neck was fully confirmed by the post-mortem Examination Report**. .. The investigating agency had opined in its report submitted under section 173 Cr.P.C that the petitioner was guilty only of providing behind-the-scene abetment to his co-accused and that he was not present at the scene of the crime at the relevant time but with the assistance of the learned Additional Prosecutor General, Punjab appearing for the State we have gone through the record of investigation and have found that the opinion so recorded by the investigating agency is not based upon sound material…
> (underlining is mine)

Further, per available record, there is also recovery of illicit weapon, used in the commission of offence, from the applicant which also advances existence of reasonable grounds against the accused. Bail stage is never a proper stage to attempt deciding controversial questions, requiring evaluation of evidence as shall be in breach of settled principles of law that **deeper appreciation of evidence is not permissible.** Further, the witnesses in their respective statements under Section 161, Cr.P.C. have supported the version of the complainant set forth in the FIR and categorically charged the applicant with the commission of offence. The medical evidence coupled with ocular evidence also fully corroborated the case of the prosecution. No doubt there is delay of about

21 hours in lodging the FIR, but the same has been well explained by the complainant. Further, delay in FIR per se is no ground for grant of bail if otherwise accused seems to be linked with offence with which he is charged. From tentative assessment there appears reasonable grounds to believe that the applicant is guilty of the offence charged with, which is heinous one and provides capital punishment, hence the applicant cannot claim bail as a matter of right even in name of being in custody for considerable period. The bail in a case, falling within prohibitory clause, could only be granted on making out a case of further inquiry which, *too,* by referring tentative assessment. Needless to mention once again that at the stage of bail only tentative assessment is to be made and it is not permissible to go into details of evidence one way or the other because that might prejudice the case of one party or the other.. Insofar as the case law cited by the learned counsel for applicant, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the applicant.

8. In the above circumstances, *prima-facie*, I am of the considered view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application being devoid of merits stands dismissed accordingly. It is, however, made clear that the above observations are purely tentative in nature and the same are only meant for the purpose of bail and would have no impact or effect on any party during the trial. Besides, trial court shall conclude the trial within six months from the date of receipt of this order.

JUDGE

Sajid