

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.  
Cr. Bail Appl. No.D-25 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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10.08.2011.

Mr. Irfan Ali Bughio Advocate for the Applicants.  
Syed Meeral Shah Deputy Prosecutor General Sindh

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*Ahmed Ali M. Shaikh J.* Through the instant application, applicants seek post arrest bail in crime No.189/2010 of P.S. Market Hyderabad for offence punishable u/s 384, 427, 506(2), 337 H(ii), 34 PPC r/w sections 6/7 of Anti Terrorism Act.

2. Brief facts giving rise to this bail application are that on 03.09.2010 at 2100 hours, complainant Ghulam Mustafa Memon lodged report stating therein that he is running a shop in the name of "Hala Handi Craft" at City Gate Hotel Hyderabad; few days back one Mehrab Khoso came to his shop and purchased four suits of clothes, however, he did not make payment thereof and introduced himself as General Secretary of Jeay Sindh Mahaz. On the same day, another person namely Ali Sher Khokhar who introduced himself as Finance Secretary of Jeay Sindh Mahaz also came to his shop and got Rs.5000/- as extortion. He further alleged that on 05.09.2010 at about 2.09 p.m he received a call from cell number 0300-3016428 and 0313-3359826, who introduced himself as Imtiaz Mirani President of Jeay Sindh Mahaz District Hyderabad and demanded Rs.5000/- and on his refusal he issued threats of dire consequences. On the same day, at about 3.00 p.m. Imtiaz Miran alongwith two unknown persons came at his shop

and demanded Rs.50,000/-, however, complainant refused to fulfill their demand on which they beaten him and robbed Rs.15000/-. They also fired at his shop resultantly some glasses of the shop were broken. He informed his brother Pervez Memon and then appeared at police station.

3. It is inter alia contended by the learned counsel for the applicants that the applicants are innocent and have been falsely implicated in this case due to political enmity; F.I.R. is belated by seven hours without any explanation, hence the same is result of deliberation and consultation. It is further contended that the applicants are students and one of them is running his business of Chicken shop; name of the applicant Lutuf Ali does not find place in the F.I.R. but he has been involved in this case without any material connecting him with the commission of alleged offence. It is lastly contended that the complainant Ghulam Mustafa has filed his affidavit whereby he has exonerated the present applicants from commission of offence, hence the case of the applicants requires further inquiry.

4. Conversely Syed Meeral Shah Deputy Prosecutor General Sindh could not controvert the contentions raised by the learned counsel for the applicants. However, he half heartedly opposed the bail plea of the applicants.

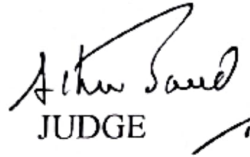
5. We have heard the learned counsel for the parties and complainant Ghulam Mustafa, who was present in court. On query complainant verified the contents of his affidavit which is available in the file. He categorically stated that neither the applicants were the same persons who came at his shop nor they extorted any amount from him. Upon a perusal of affidavit filed by the complainant, it appears that in para No.3 of the affidavit he has

stated that the present applicants were not the same persons, who visited his shop or demanded Bhatta but those were other persons. Since the complainant himself negates the prosecution version with regard to identity of the present applicants and during investigation the I.O. could not collect any material connecting the applicants/accused with commission of offence, the case in hand appears to be one of further inquiry.

6. In view of the above, we are of the considered view that this is a case of further inquiry as there is conflict between two sets of statements i.e. F.I.R. and the affidavit of the complainant. It is settled principle that the evidence of a witness cannot be ignored but when such witness files his affidavit and exonerates the accused from commission of offence, the court while using such affidavit filed by the prosecution witness must be satisfied about the identity of the deponent. In the case in hand the complainant voluntarily appeared before this court and verified the contents of his affidavit whereby he exonerated the present applicants. The complainant is a victim as well as star witness of the prosecution but he is not willing to depose against the affidavit. Besides the above, prosecution could not collect any material connecting the applicants with the commission of the offence. Neither any incriminating article has been recovered from either of the applicants nor applicants are said to be previous convict or indulged in similar activities in past.

7. For the foregoing reasons, we are clear in our mind that the case of the applicants fall within the ambit of further inquiry as contemplated in Section 497 (2) Cr.P.C and the applicants have succeeded to make out a case for bail.

8. These are the reasons in support of our short order dated 09.08.2011 whereby the applicants/accused were admitted to bail.

  
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