

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

Criminal Bail Application No.S-1346 of 2022

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

21-06-2023

Mr. Farhad Ali Abro advocate for applicant.

Ms. Safa Hisbani, Assistant Prosecutor General Sindh.

MUHAMMAD IQBAL KALHORU, J: - There is a dispute between complainant party and accused party over matrimonial affairs and they have registered cases against each other on account of which. In this FIR complainant has alleged that on the day of incident viz. 31.05.2022 at 2000 hours he along with PWs named in FIR and deceased Manthar Ali was present in his house when they heard cries and firing shot reports coming from outside. Meanwhile, applicant along with seven other accused named in FIR duly armed with deadly weapons entered his house and at the instigation of co-accused Mst. Hoor and Wali Muhammad, accused Waheed made a straight fire on his brother Manthar hitting his temple over left eye. Applicant armed with a pistol also fired upon him hitting his abdomen. When complainant party raised cries, accused went out of their house. The injured was first taken to Police Station Pabban by the complainant party and after receiving a letter for his treatment, they took him to Civil Hospital Hyderabad but on way he succumbed to injuries and died. Hence FIR.

2. During investigation applicant was arrested. He filed application for post arrest bail which has been dismissed by trial Court vide order dated 06.10.2022, hence this application.

3. Learned counsel has argued that applicant is innocent has been falsely implicated; that in investigation six nominated accused have been let off by the police for want of sufficient evidence; that main accused Waheed, assigned a role of causing fatal injury on head of the deceased, has also been let off by the police which makes the case against applicant to be of further inquiry; that the story and manner of commission of offence as disclosed by the complainant and eye witnesses have been disbelieved by the I.O. who in report under section 173 CrPC has given a different story of the manner in which

the offence was committed. His report shows that the firing was made by the accused from upper portion of their house and no one had committed trespass on complainant's house; that the applicant is assigned the role hitting abdomen of the victim by firing but post mortem report shows that victim had not received any injury on his abdomen and in view of such conflict in medical and oral account/story applicant is entitled to the concession of post arrest bail. He has relied upon the cases reported as 1998 PCr.LJ 143, 2002 PCr.LJ 791, 2009 PCr.LJ 163, 2010 PCr.LJ 984, 2014 PCr.LJ 435, 1980 SCMR 784 and 2009 YLR 15 to support his contentions.

4. On the other hand, learned Assistant P.G. has opposed bail to applicant and stated that opinion of police is not binding upon the Court which has taken cognizance of offences against all the accused including co-accused Waheed who has been assigned role of causing firearm injury on the left temple of victim. Applicant has been assigned specific role of making a direct fire on the deceased and he is not entitled to bail.

5. I have considered submissions of parties and perused material available on record including the case law. In FIR applicant is specifically named to have made a fire upon the deceased which although is stated to have hit his abdomen but as per post mortem the deceased was not having any firearm injury there. Notwithstanding, the question is whether such discrepancy can be given preference at the bail stage or not. It is settled, that at bail stage only tentative assessment of the material on record is to be undertaken. Making any comment in either way over the alleged difference in medical and oral account would amount to carrying on deeper appreciation of the evidence, which would tend to impair the case of either party on merits. The other question to ask would be whether it is probable for a witness and can be expected from him to give exact local of the injury being inflicted to a victim in a tense and charged moment when he along with victim is being assaulted by so many accused. The answer would be a simple no.

6. Learned defense counsel has relied much upon investigation report to urge his case for bail. In the investigation, no doubt some of the accused named by the complainant have been let off which has, though, not been accepted by the trial Court and it has taken cognizance of offences against all the accused. But insofar as applicant is concerned, it has been concluded by the I.O. that from his

firing and that of co-accused Sadique Parhiyar, deceased Manthar had died. Such conclusion of I.O. and the oral account furnished by the complainant and witnesses at least *prima facie* indicate involvement of applicant in the commission of the offence. His particular role as highlighted in FIR and the impact of post mortem report not showing any firearm injury on abdomen of the victim in view of above discussion requires deeper appreciation of evidence which can only be done after relevant witnesses are examined and not at this stage, in a way beneficial to the applicant.

7. Therefore, not finding the applicant entitled to the concession of post arrest bail at this stage, I **dismiss** his application. However, direct the trial Court to examine at least eye witnesses within a period of three (03) months, after which applicant would be at liberty to move a fresh bail application which, if filed, shall however be decided on its own merits.

8. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE