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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Bail Application No. 01 of 2018

Date Order with Signature of Judge .

For hearing of bail application.

24.09.2018.

Mr. Azhar Hussain Abbasi, Advocate for Applicant.
Mr. Sharafuddin Kaanhar, A.P.G for the State

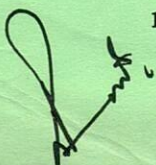
Having been rejected his earlier application for grant of post-arrest bail bearing No. 220 of 2017, vide order dated 11.12.2017, passed by the Court of 1st Addl. Sessions Judge, Shikarpur, applicant/accused Muhammad Azeem s/o. Hazoor Bux, through instant Criminal Bail Application seeks post-arrest bail in Crime No. 79/2009, registered at P.S Rustam, under Section 302, 148 and 149, P.P.C.

2. Briefly stated facts of the prosecution case are that, on 04.08.2009, complainant Abdul Majeed Mahar s/o Juma Khan lodged aforesaid F.I.R., alleging therein that he owned agricultural land and he had inimical terms with Muhammad Hasan who was his neighboring land owner over matter of water; that on the fateful day he, along with his brothers Abdul Hakeem, Abdul Hamed and cousin Abdul Haque, was sitting at hotel of Bhagial Mahar for taking tea at 06:30 p.m. when accused Muhammad Hasan, Muhammad Nawaz, Ali Asghar, Muhammad Ismail, Barkat and two unknown persons with open faces armed with T.T. pistols came there and fired from their pistols upon Abdul Hakeem, which hit him on his left side of chest, right arm, right armpit, neck and on the back of Abdul Hakeem, who cried and fell down on the ground; that the cries of complaint party attracted to people sitting on hotel and villagers whom seeing coming the accused person run away, then they found Abdul Hakeem dead having firearms injuries on different parts of his body.

3. The learned counsel for the applicant has submitted that the applicant is innocent and has falsely been implicated in this case; that co-accused Ali Asghar, Hazoor Bux and Barkat were arrested after submission of challan, while accused Muhammad Hasan and Muhammad Ismail are still absconders; that co-accused Ali Asghar has been convicted by the trial Court vide judgment, dated 13.11.2013, and co-accused Muhammad Nawaz was acquitted of the charge vide judgment, dated 31.05.2017, co-accused Hazoor Bux was granted bail by the trial Court vide order, dated 29.04.2010, but he jumped out; so also, co-accused Barkat was granted bail by the trial Court vide order, dated 29.04.2010, he also jumped out but later he was arrested; that the case of present accused is on better footings than the case of those co-accused who were admitted on bail by the trial Court as his name does not appear in the F.I.R. despite the fact that the applicant being resident of same village is known to complainant and he was subsequently implicated by the complaint in the case on the basis of his further statement recorded under section 161 Cr.P.C.; hence, the guilt of the applicant requires further enquiry;

4. On the other hand, learned A.P.G has opposed this application on the ground that the applicant was one of two unknown persons who was subsequently identified by the complaint and thus he was implicated in the case on the basis of his further statement; that the co-accused who ere granted bail by the trial Court jumped out hence, there is an apprehension that in case the applicant is admitted to bail, he will also jumped out; that the applicant remained fugitive from law and proclaimed offender for about eight years and then he was arrested on 19.10.2017; therefore, he is not entitled for concession of bail.

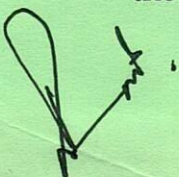
5. I have heard the learned counsel for the parties and perused the material available on record.



6. It is an admitted position that both the "unknown" accused persons who reached the spot and committed alleged offence were with open faces. The applicant being resident of same village is known to complainant but he has not been nominated in the F.I.R by name and his name was taken by the complainant in his subsequent statements recorded under section 161 Cr. P.C. Under such circumstances, the guilt of the applicant requires further enquiry as envisaged under sub-section (2) of Section 497 Cr.P.C.;


7. It has been argued by the learned A.P.G. that the applicant remained absconder and fugitive from law; hence, he is not entitled to the concession of bail. I have already resolved that the case against the applicant calls for further inquiry into his guilt. The law is now well settled now that in a case calling for further inquiry into the guilt of an accused person bail is granted to him as of right or not by way of grace or concession. It may be true that sometimes bail is refused to an accused upon his having remained a Proclaimed Offender but at the same time it is equally true that such refusal of bail proceeds primarily upon a consideration of propriety. It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail. Reliance in this respect may be placed on the case of *Ibrahim vs. Hayat Gul and others* (1985 SCMR 382), *Muhammad Sadiq vs. Sadiq and others* (PLD 1985 SC 182), *Qamar alias Mitho vs. The State and others* (PLD 2012 SC 222) and *Ehsan Ullah vs. The State* (2012 SCMR 1137).

8. For the foregoing facts and reasons, instant bail application is allowed. The applicant is admitted to post-arrest bail subject to his furnishing two solvent sureties in the sum of Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand Only) each, with P.R. Bond in the like amount to the satisfaction of the Addl. Registrar of this Court.



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9. Needless to say that the observations made by this Court are tentative in nature and shall not influence the trial Court while deciding the case on merits and in case the applicant misuses the concession of bail, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.


JUDGE

Mr. Ali Muhammad S/o. Hazoor Bux

CNIC No. 43303-0177112-7

Stood surety fro applicant(s) / accused (Name(s) a/w CNIC No.)
Mohammad Azeem (43303-0604803-1)

In the Sum of Rs. 25000/- each Total

Rs. 25000/- On 15.10.2018

Vide Surety Bond No. 312/2018


Accountant 15.10.18

Mr. Ali Muhammad S/o. Muhammad Sachal

CNIC No. 43303-8007918-7

Stood surety fro applicant(s) / accused (Name(s) a/w CNIC No.)
Mohammad Azeem (43303-0604803-1)

In the Sum of Rs. 25000/- each Total

Rs. 25000/- On 15.10.2018

Vide Surety Bond No. 313/2018


Accountant 15.10.18