

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Bail Applications No. **S-199** of **2017**

APPLICANT : Jahanzeb s/o Ghulam Murtaza Mangi,
through Mr. Safdar Ali G. Bhutto,
Advocate

RESPONDENT : The State,
through Mr. Sardar Ali Shah, A.P.G.

COMPLAINANT : Niaz Hussain Chandio,
through Mr. Ali Nawaz Ghangro,
Advocate

Date of Hearing : 12.06.2017

Date of Order : 12.06.2017

ORDER

ZAFAR AHMED RAJPUT, J.- After rejection of his earlier post-arrest bail application bearing No. 3 of 2017, vide order dated 13.05.2017, passed by the learned IV-Additional Sessions Judge, Larkana, the applicant/accused, namely, Jahanzeb s/o Ghulam Murtaza Mangi, has approached this Court through instant application for seeking bail in Crime No.05 of 2017, registered at Police Station Darri, under Sections 302/34 P.P.C.

2. Briefly stated, the facts of the prosecution case are that on 11.01.2017 at 2200 hours, complainant Niaz Hussain lodged aforementioned F.I.R. alleging therein that accused Jahanzeb used to pressurize and force his cousin Ali Hyder for establishing friendship and on his refusal he extended threats to him. It has further been alleged that on 10.01.2017 complainant, his cousin Naveed Ali, brother Shahnawaz and Ali Hyder came out from the

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house of Ali Hyder at 07:30 p.m. and saw three persons available on 125-motorcycle, out of them, they identified only one person as Jahanzeb Mangi (applicant), who took out pistol and aiming towards Ali Hyder asked to him as to why he had kept company with others; on that Ali Hyder replied that they were his relatives and then Ali Hyder went near to Jahanzeb and other unidentified accused persons also took out pistols and pointed the same towards the complainant party; meanwhile, Jahanzeb fired on the left side of the chest of Ali Hyder, who fell down unconscious on the ground and; thereafter, accused persons fled away on their motorcycle. Injured Ali Hyder was taken to hospital, where he passed away at 8:00 p.m.

3. During course of investigation, police arrested the applicant/accused on 17.01.2017 and on completion of investigation submitted the challan against the accused for the offence under Section 322 P.P.C.

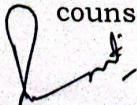
4. I have heard the learned counsel for the accused and complainant as well as APG, and perused the material available on record.

5. Learned counsel for the accused has mainly contended that the accused is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives. He has further contended that there is an inordinate delay of 26 hours in lodging the F.I.R., for which no plausible explanation has been furnished by the compliant, thus premeditation cannot be ruled out and, even otherwise, after exhaustive investigation it was

found to be a case of *Qatle-bis-sabab*, which is under Section 322 P.P.C though non-bailable yet not punishable with any period of imprisonment and is only liable to *Diyat*; as such, no reasonable grounds exists to believe that the accused is guilty of an offence punishable with death, imprisonment for life or even for ten years and per se sufficient grounds are available to hold that the guilt of accused requires further enquiry; hence, the accused is entitled to the concession of bail. In support of his contentions, the learned counsel has relied on the case of *Muhammad Ashraf Asim v. Sajjad Ahmed and others* (2011 SCMR 1725) *Tariq Mahmood v. The State* (2005 YLR 1968) *Yousuf Khan v. The State* (2000 P. Cr. L.J 203).

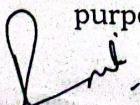
6. Conversely, Learned counsel for the complainant has opposed this application on the grounds that the accused is nominated in the F.I.R. lodged under Section 302 P.P.C. with specific role of causing fatal firearm injury to deceased Ali Hyder and the alleged offence of *Qatl-i-amd* being punishable for death, imprisonment for life or imprisonment up to 25 years falls within the prohibitory clause of Section 497 Cr. P.C; therefore, the accused is not entitled for the bail. He has also maintained that although the Judicial Magistrate-III, Larkana has accepted the final challan submitted by the police for the offence under section 322 P.P.C., vide order dated 09.03.2017, but that order has been challenged by the complainant before this Court in Cr. Misc. Application, filed under Section 561-A, Cr. P.C.

7. Learned A.P.G. while adopting the arguments of learned counsel for the complainant has also opposed this application.



8. As held in the case of Yousuf Khan (supra), an offence under section 322 P.P.C. though non-bailable yet is not punishable with any period of imprisonment besides the payment of *Diyat*. Under Section 497 Cr.P.C. an offence punishable for ten years imprisonment or more falls within prohibitory clause of this section. There being no express expression of law that the punishment prescribed for an offence under section 322 P.P.C. would attract the prohibitory clause, the law laid down in the case of Tariq Bashir (PLD 1995 SC 34) would be applicable.

9. As per F.I.R., the accused had caused the fatal firearm injury on the left side of the chest of deceased Ali Hyder but during the investigation it emerged that the deceased had in fact committed suicide, resultantly, prosecution submitted the final challan for the offence under section 322 P.P.C., which was accepted by the Judicial Magistrate concerned, vide order dated 09.03.2017, which order the complainant has impugned before this Court in a Cr. Misc. Application. It may be observed here that the concession of bail to an accused cannot be withheld, if he is otherwise entitled to the bail, merely on the ground that a criminal miscellaneous application is pending adjudication against the order of acceptance of the challan/report under sections 170/173 Cr.P.C. by the magistrate. In the instant case; however, at this stage of the case, I would refrain to comment upon sufficiency or otherwise of the material collected by the police during course of investigation to justify it for submission of challan for the offence falling under Section 322 P.P.C. All the same, suffice it to observe for the purpose of disposal of this application that the investigation of this



case has already been brought to a close and the challan has been submitted where under the physical custody of the accused is not required by the police for further investigation. The prosecution itself has two versions of the death of deceased Ali Hyder, one advanced by the complainant party and the other concluded by the investigation officer, which divergence has rendered the case against the accused one of further enquiry as envisaged under sub-section (2) of Section 497 Cr. P.C.

10. Under the circumstances, I am of the view that it is a fit case for grant of bail; therefore, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs Only) and PR Bond in the like amount to the satisfaction of the trial Court.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits and if accused in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.


JUDGE