

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
3rd CrI. Bail Appln. No.S-336 of 2016.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection as Flag 'A'
2. For Katcha Peshi.

12.08.2016.

Mr. Qazi Sajid Ali M. Qureshi, advocate for the applicant along with applicant.

Meer Mumtaz Ali Bughio, advocate for the complainant.

Mr. Khadim Hussain Khooharo, A.P.G.

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Zafar Ahmed Rajput, J- Through this CrI. Bail Application under section 498, Cr.P.C, applicant Siraj Ahmed seeks pre arrest bail in Crime No.16/2015 registered at Police Station Rasheed Wagan, District Larkana, under section 302, 147, 148, 149, PPC.

His earlier Bail Application bearing CrI. Bail Appln. No.70 of 2016 was dismissed by the learned Sessions Judge, Larkana, vide order dated 23.01.2016, while his second bail application bearing No.65 of 2016, was also dismissed by this Court in non prosecution vide order dated 27.06.2016. Thereafter on 12.07.2016, instant bail application was filed for the same relief.

Briefly stated, facts of the case are that on 02.10.2015 at 1030 hours, complainant Zamir Ali Arijo, lodged the aforementioned FIR alleging therein that on the said date at about 0815 hours, he along with his uncle Arbab Ali, aged about 60/62 years and his maternal cousin Mumtaz Ali and Bashir Ahmed were going to Larkana, on Motorcycle and when they reached Rasheed Wagan Road at Malgani diversion five unknown persons, out of them two persons had Klashnikovs in their hands and two persons had pistols while the one had repeater in his hand, stopped them and the persons armed with Klashnikovs asked them that there remains some account against them but they were not responding positively and then they made straight fires at his uncle Arbab Ali, with intention to commit murder which hit him and he fell down on the ground.

Thereafter all the accused persons ran away while his said uncle died at the spot.

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12/08/2016

Learned counsel for the applicant has contended that the name of the applicant/accused does not transpire in the FIR and his name was later on disclosed by the Prosecution Witnesses, namely, Mumtaz Ali and Bashir Ahmed in their statements under section 161, Cr.P.C which were recorded after the delay of ten days. He has further contended that the applicant/accused and P.Ws are residing in the one and same village and they are cast fellows and there is only a wall between complainant party and the applicant/accused but even then the applicant has not been nominated by the complainant in the FIR. Learned counsel has also contended that in case the interim pre arrest bail is not confirmed the applicant shall be arrested and humiliated by the police on the behest of the complainant due to enmity. In support of his contention, learned counsel has relied upon the cases of Nizam-ud-Din v. The state (1991 P.Cr.L.J 2229), Wazeer v. The State (2001 P.Cr.L.J 683), Shamsur Rehman v. Muhammad Rafiq and another (PLD 1997 Kar 194), Nazar Muhammad and 2 others v. The State (2012 P.Cr.L.J 430), Muhammad Jawed and 8 others v. The State (2012 P.Cr.L.J 617 & Rizwan Zafar v. The State an other (2013 P.Cr.L.J 226).

On the other hand learned counsel for the complainant has opposed the grant of bail to the applicant/accused on the ground that he is involved in a heinous offence of murder. He has maintained that the applicant was nominated by the complainant in the FIR by name but the police deliberately did not mention his name in FIR due to influence.

Learned A.P.G, has recorded his no objection to the confirmation of bail to applicant on the ground that the case of applicant squarely falls under the ambit of further enquiry as envisaged under section 497(2), Cr.P.C, since his name does not appear in promptly lodged FIR but he was later on implicated in this case by the P.Ws in their statements under section 161, Cr.P.C recorded after ten days of the lodging of the FIR.

Heard learned counsel for the parties and learned A.P.G and perused the material placed on record.

It is an admitted position that the applicant/accused is not only a caste fellow of the complainant party but also resides in same village. There is also no denial

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to the fact that though the FIR was promptly lodged but the applicant/accused was not

nominated by the complainant in the FIR and first time his name was taken for the alleged incident in the statements of P.Ws, namely, Mumtaz Ali and Bashir Ahmed, which were recorded after ten days of lodging of the FIR. Thus there is every possibility that the name of the applicant has been introduced in the case after due deliberation and consultation. This fact gets further support from the fact that the parties are on inimical terms with each other. Hence mala fides and false implication cannot be ruled out. The examination of the record from such angle tentatively leads to the conclusion that the guilt of the applicant needs to be determined after recording of evidence and at this stage the case of the applicant squarely falls within the ambit of section 497(2), Cr.P.C; therefore, the applicant is entitled for the concession of bail.

In view of above facts and discussion, the interim bail granted to the applicant/accused, vide order dated 12.07.2016, is hereby confirmed on the same terms and conditions.

[Handwritten Signature]
 12/08/2016
 Judge

Yousuf Panhwar/**