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

Bail Applications No. **8-459** of **2017**

APPLICANT : Niaz Hussain s/o Tagyo Khan Godehi,
through Mr. Muhammad Sharif Awan,
Advocate

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

COMPLAINANT : Ahmed S/o. Ghulam Qadir in person

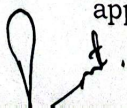
Date of Hearing : 20.10.2017

Date of Order : 20.10.2017

ORDER

ZAFAR AHMED RAJPUT, J.- After rejection of his earlier post-arrest bail application in Sessions Case No. 168 of 2016, vide order dated 15.09.2017, passed by the learned IInd Additional Sessions Judge, Mehar, Distt. Dadu, applicant/accused Niaz Hussain s/o Tagyo Khan has approached this Court through instant application for the grant of bail in Crime No.222 of 2017, registered at Police Station K.N. Shah under Sec: 324, 504, 147, 148 and 149 P.P.C.

2. Briefly stated, the facts of the prosecution case are that on 23.12.2015 at 1800 hours, complainant Ahmed S/o. Ghulam Qadir lodged aforementioned F.I.R. alleging therein that on 19.12.2015 at about 1400 hours he and his brother Riaz Ahmed and cousins Liaquat Ali and Wazeer Ali were standing near their houses, when accused Rahib Ali, Irfan, Sadam armed with pistols, Niaz (present applicant) and Allah Rakhio armed with lathies and hatchets,



reached there and started using abusive language; on that, his brother Niaz Ahmed restrained them but accused Rahib and Saddam on being annoyed fired straight at Riaz Ahmed with intention to kill him, which hit him on his right leg and left arm, respectively, and accused Irfan fired shots at the houses of the complainant party, while other accused persons caused lathies and blunt side hatchet blows to Riaz Ahmed and; thereafter, on the cries of complainant party, the accused went away.

3. After usual investigation, police submitted the challan against the accused person showing them as absconders and; thereafter, on 09.09.2017, police arrested the applicant/ accused.

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; that there is an inordinate delay of 4 days in lodging of F.I.R., for which no plausible explanation has been furnished by the complainant, thus premeditation cannot be ruled out; that the allegation against the applicant/accused is of general nature and no specific role has been attributed against him; that the vicarious liability, if any, shall be determined by the trial Court after trial; that, even otherwise, the injuries allegedly suffered by injured Riaz Ahmed has been declared in medical report as *Ghayr-Jaifah-Hashimah*, punishable under Section 337-F (v) P.P.C for R.I. Five

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years, which does not fall within the prohibitory clause of section 497 Cr. P.C. 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; therefore, the applicant/accused is entitled to the concession of bail.

6. Learned A.P.G. has conceded the arguments of learned counsel for the applicant/accused on merit.

7. It appears from the perusal of the material on record that only allegation against the applicant/accused is his presence at the spot and no other overt act has been attributed towards him. It is not the case of prosecution that applicant/accused has caused any firearm injury to injured Riaz Ahmed and infliction of any lathi and hatchet blow to him is neither supported by memo of injury not by MLR. The presence of the applicant/ accused at the place of incident and his role in the commission of alleged offence will be decided at the stage of trial. Keeping in view, the particular facts and circumstances of the case when no vital role has been attributed to applicant/accused apart from the fact that he had accompanied the co-accused at the time of occurrence, the vicarious liability calls for further probe within the meaning of subsection 2 of section 497 Cr. P.C.

8. 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

2000/-

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Rs.200,000/- (Rupees Two Lacs Only) and PR Bond in the like amount to the satisfaction of the trial Court.

9. 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 applicant 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