

ORDER SHEET

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

Cr. Bail Application No. **S-363** of **2018**

Cr. Bail Application No. **S-372** of **2018**

Date	Order with signature of Hon'ble Judge
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Applicants in Cr. Bail Application No. **S-363** of **2018**:

1. Sikander Ali alias Sikander s/o Ghulam Rasool
2. Mukhtiar Ali alias Mukhtiar s/o Ghulam Rasool
3. Muhammad Ayoob alias Ayoob s/o Ghulam Rasool
4. Sajjan s/o Mukhtiar
5. Aijaz Ali alias Aijaz s/o Muhammad Ali

Applicants in Cr. Bail Application No. **S-372** of **2018**:

1. Abbas Ali s/o Meer Muhammad
2. Muhammad Siddique s/o Meer Muhammad
3. Hussain s/o Abbas Ali

All the applicants in both Cr. Bail Applications through  
Mr. Ali Anwar Sahar, Advocate.

Respondent in both Cr. Bail Applications: The State,  
through Mr. Sharafuddin Kanhar, A.P.G.

Complainant in both Cr. Bail Applications: Bahadur Khan  
s/o Mooso, through Mr. Abdul Sattar Janveri, Advocate.

Date of hearing: 08.10.2018.

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**ORDER.**

**ZAFAR AHMED RAJPUT-J.**:- By this common order, I intend to dispose of both the listed bail applications, as the same being arising out of Crime/ F.I.R No. 27 of 2018, registered at P.S Fareedabad, District Dadu under sections 324, 337-A(i), 337-F(i), 147, 148, 149, 504, 114 PPC, have been heard together.

1. Through Cr. Bail Application No. **S-363** of **2018**, applicant/accused, namely, Sikander Ali and others have sought pre-arrest bail while by means of Cr. Bail Application No. **S-372** of **2018**, applicants Abbas Ali

and others seek post-arrest bail in aforementioned crime. Their earlier bail applications for grant of pre-arrest bail and post-arrest bail bearing Cr. Bail Application No.940 and 941 of 2018, respectively, were heard and dismissed by the learned II<sup>nd</sup> Additional Sessions Judge, Mehar vide consolidated order, dated 09.7.2018. Applicants Sikander Ali and others, in Cr. Bail Application No. **S-363** of **2018** were admitted to ad-interim bail by this court vide order, dated 12.07.2018, now they seek confirmation of the same.

2. Briefly stated facts of the prosecution case are that, on 18.06.2018, complainant Bahadur Khan Khoso lodged the afore-mentioned F.I.R stating therein that there exists a dispute between Sikander Ali Khoso and others and him over landed property. On 18.6.2018, he along with his brother Khadim Hussain Khoso and maternal nephews Sadam Hussain, Ali Gul, Rashid and Muhammad as well as his son Sattar were standing in front of his house, when at about 3.00 p.m. accused persons, namely, Sikander s/o Ghulam Rasool 2. Abbas s/o Mir Muhammad 3. Mukhtiar s/o Ghulam Rasool armed with hatchets 4. Ayooob s/o Ghulam Rasool armed with repeater 5. Sajjan s/o Mukhtiar Khoso 6. Aijaz s/o Muhammad Ali Khoso armed with lathies, 7. Hussain s/o Abbas Khoso armed with gun 8. Siddique s/o Mir Muhammad Khoso armed with pistol and two unknown accused came and started abusing them by referring to dispute over land and then accused Sikander instigated rest of accused persons to cause their murder, on which accused Abbas caused hatchet blow to complainant's brother Khadim Hussain, accused Sikander caused hatchet blow to his nephew Sadam Hussain on his head at left side, accused Mukhtiar caused hatchet blow to his nephew Ali Gul on his head, accused Ayooob caused butt blow of his repeater to his nephew Rashid on his head, accused Sajjan caused lathi blow to his nephew

Muhammad Khan on his head and accused Aijaz caused lathi blow to his son Sattar on his head while accused Hussain and Siddique fired from their respective gun and pistol over him (complainant) with intention to cause his murder but he fell down on the ground and saved and on the cries of complainant party, accused persons went away.

3. Learned counsel for the applicants has mainly contended that the applicants are innocent and have falsely been implicated in this case with the connivance of police with mala fide intention and ulterior motives; that admittedly the parties have dispute over landed property; that mala fide on the part of complainant can be examined from the fact that the complainant has roped the maximum persons of one and same family in the case just to set the score of previous enmity; that even otherwise the role assigned to applicants Sikander Ali, Mukhtiar Ali, Muhammad Ayoob, Sajjan and Aijaz Ali (the applicants in Cr. Bail Appl. No. S-363 of 2018) is of causing minor injuries, while the role assigned to the applicants Muhammad Siddique and Hussain (the applicants in Cr. Bail Appl. No. S-372 of 2018 is only to the extent that they fired with their weapons on complainant, causing no injury to him, and the role assigned to applicant Abbas Ali (the applicant in Cr. Bail Appl. No. S-372 of 2018) is of causing hatchet blow to brother of complainant, namely, Khadim Hussain which injury though has been declared by the MLO as *Shajjah-e-Hashimah*, falling under section 337-A (iii), P.P.C. but there appears no evidence of establishing the alleged injured sustain any fracture; which makes the case of said applicant of further inquiry; hence, the applicants are entitled for the concession of bail.

4. On the other hand, learned counsel for the complainant has vehemently opposed the grant of bail to the applicants on the ground



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that all the accused persons in furtherance of their common intention attacked on complainant party and caused them injuries, which are well supported with the report of MLO.

5. Learned A.P.G while opposing the post-arrest bail of the applicant Abbas Ali in Cr. Bail Appl. No.S-372 of 2018, has recorded his no-objection to the grant of bail conceded to rest of applicants on the ground that the injuries attributed to them being minor in nature, does not fall within prohibitory clause of section 497 Cr. P.C.

6. Heard learned counsel for the applicants, complainant as well as A.P.G and perused the material available on record.

7. As per F.I.R., the role assigned to applicant Sikander Ali, Mukhtiar Ali, Muhammad Ayoob, Sajjan and Aijaz Ali (the applicants in Cr. Bail Appl. No. S-363 of 2018) is of causing minor injuries to injured Sadam Hussain, Ali Gul, Rashid, Muhammad Khan and Sattar, which injuries have been declared as falling under section 337-L (ii) and 337-A (1), P.P.C, which are being punishable for imprisonment for two years, are bail able under the schedule of offences. Applicants Sikander Ali and others were admitted to ad-interim pre arrest bail vide order dated 12.7.2018 and there is no complaint against them of misusing the concession of interim pre-arrest bail. While the role of applicant Muhammad Siddique and Hussain (the applicants in Cr. Bail Appl. No. S-372 of 2018) is only that of causing ineffective firing by their weapons i.e. Gun and pistol respectively. The presence of said applicants at the place of incident and their 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 said applicants apart from the facts that they had accompanied the co-accused at the

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time of occurrence and made ineffective firing on the complainant, the vicarious liability calls for further probe within the meaning of subsection (2) of Section 497 Cr.P.C.

8. Applicant Abbas Ali has been implicated with specific role of causing hatchet blow to Khadim Hussain on his left temporal region, which has been declared by the MLO as *shajjah-i-hashimah*, falling under section 337-A (iii), P.P.C which is punishable for imprisonment for 10 years. From the tentative assessment of the evidence in hands of prosecution, I am of the view that prima-facie sufficient evidence is available against applicant Abbas Ali to connect him with the commission of alleged offence. Every hypothetical question which could be imagined would not make it a case of further enquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

9. For the foregoing facts and reasons, the ad-interim pre arrest bail granted to the applicants Sikander Ali, Mukhtiar Ali, Muhammad Ayoob, Sajjan and Aijaz Ali in Cr. Bail Application No. S-363 of 2018 vide order, dated 12.7.2018, is hereby confirmed on the same terms and conditions, while applicants Muhammad Siddique and Hussain (applicants in Cr. Bail Application No. S-372 of 2018) are admitted to post arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/= (Rupees Fifty Thousand Only), each, and P.R bond in the like amount to the satisfaction of Additional Registrar of this Court, while the application for post- arrest bail to applicant Abbas Ali is rejected.

10. 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 applicants and in case the

applicants, who have been admitted to bail, misuses the concession of bail, the trial Court shall be at liberty to cancel the same after giving notice to them, in accordance with law.

Both aforementioned bail applications stand disposed of in the above terms.



JUDGE