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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Bail Application No.S-353 of 2018

DATE OF HEARING	ORDER WITH SIGNATURE OF HONOURABLE JUDGE
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14.09.2018

1. For orders on office objections
2. For hearing of Bail Application

M/s. Ali Nawaz Ghanghro & Muhammad Hashim Soomro,
Advocates for the applicant

Mr. Khadim Hussain Mughari, Advocate for the complainant

Mr. Khadim Hussain Khooharo, Addl. P.G., for the State.

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ZAFAR AHMED RAJPUT, J: - After rejection of his earlier application for grant of post-arrest bail being No. 486 of 2018, vide order dated 04.06.2018, passed by the Court of Addl. Sessions Judge-II, Kamber, applicant/accused Khan @ Muhammad Khan s/o. Faqeer Muhammad, through instant Criminal Bail Application seeks post-arrest bail in Crime No. 9 of 2018, registered at P.S Warah, under Section 302, 337-H (2) & 34 P.P.C.

2. The prosecution case against the present applicant, as narrated in the F.I.R., is that on 18.01.2018 at about 1030 hours, he was present at Maim Primary School, Warah along with co-accused (1) Imdad s/o Andal (2) Muhib s/o Sheeral (3) Nawaz s/o Din Muhammad, duly armed with pistol, when co-accused Imdad caused fire-arms injury to Ayaz Ali, the son of complainant, and then he along with co-accused persons run away resorting to firing in the air. Later, Ayaz Ali succumbed to injuries on the way to hospital.

3. The learned counsel for the applicant has mainly contended that the applicants is innocent and has falsely been implicated in this case due to enmity; that the complainant and his son are the principal accused in F.I.R. No. 17 of 2017, recorded at P.S Warah under section 302, 114, 148, 149 and 34 P.P.C. by the

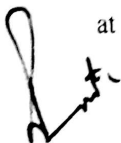
prior to that another maternal uncle of the applicant was murdered by the relatives of the complainant in the year 2013 and for that an F.I.R. bearing No. 03 of 2013 was recorded at P.S Warah under section 302, 148, 149 and 34 P.P.C; that only allegation against the applicant is of sharing common intention by making aerial firing, which cannot be determined without recording evidence and, thus, it is a fit case for further inquiry. In support of their contentions, the learned counsel have relied upon the case of *Muhammad Irfan v. The State and others* (2014 SCMR 1347).

4. On the other hand, learned counsel for the complainant while opposing the application maintains that the applicant was member of the accused party that caused murder of complainant's son and he made aerial firing; therefore, he shared common intention to commit the alleged offence; that the police has recovered five empties from the spot, so also, the pistol which he used in commission of alleged offence. Learned counsel, in support of his contentions, has placed his reliance on the case of *Dhani Bux and another v. The State* (1989 SCMR 239) and *Anwar and another v. The State* (1985 P. Cr. L.J 1626).

5. The learned A.P.G. has adopted the arguments of learned counsel for the complainant.

6. I have given my anxious consideration to the contentions of the learned counsel for the parties and perused the material available on record.

7. It is now a basic principle of law that the bail is not to be refused as punishment merely on the allegation that a person has committed offence punishable with death or imprisonment for life unless some reasonable grounds appear to prima facie establish such allegations against him. It appears that in the instant case the allegations against the applicant are that of his presence at the spot at the time of murder complainant's son and making aerial firing after deceased



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had suffered fatal a shot. No other overt act has been attributed towards him. It is not the case of prosecution that the applicant caused any injury to the deceased. The applicant was arrested on 01.02.2018, after 12 days of the incident and it is alleged that the police recovered the pistol from his possession which he had used in the commission of alleged offence but, admittedly, the same has not been sent to ballistic expert for the purpose of matching of empties. The presence of the applicant at the place of incident and his role in the commission of murder of complainant's son 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 apart from the facts 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. The case-law cited by the learned counsel for the complainant being distinguishable does not attract to the facts of the present case.

8. I, therefore, allow this application, the applicant is admitted to bail. subject to his furnishing solvent surety in the sum of Rs.3,00,000/- (Three Lacs only) and PR Bond in the like amount, to the satisfaction of trial Court.


JUDGE