

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**  
**Cr. Bail Appl No.932 of 2017**

Date	Order with signature of Judge
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Present:-

*Mr. Justice Muhammad Iqbal Kalhoro.*

*Mr. Justice Muhammad Karim Khan Agha.*

**For hearing of Bail Application.**

**28.03.2018.**

Mr. Asadullah Memon, advocate for applicant

Mr. Ali Haider Saleem, DPG along with I.O. Banhal Shah

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** By this order, we intend to dispose of above bail application, whereby the applicant is seeking post arrest bail in a case bearing crime No.56 of 2011, U/s 353, 186, 302, 395, 34 PPC, R/w Section 7 Anti-Terrorism Act, ('ATA') 1997, registered with Police Station Mubina Town, Karachi.

2. On **26.02.2011** at about 2030 hours, SHO/Inspector, Abdul Sattar Phul was communicated information about a clash between two (02) political groups viz. MQM and ANP in Quaid-e-Azam Colony, near Government School opposite Gali No.05 & 06, Block 4/A, Gulshan-e-Iqbal, Karachi. Pursuant to it, he along with his staff reached the pointed place and identified some of the accused present there, who were dully armed with the weapons and were exchanging firing against each other. Police party tried to intervene but the accused instead fired at the police party. Resultantly, HC Syed Zahir Hussain and PC Maqsood Masih were killed. The police was not able to arrest anyone from the spot but subsequently, some of the accused were arrested and they have been granted bail by the trial Court. The bail application of the present applicant was rejected by the trial Court on the ground that he has remained fugitive from law and was declared absconder. We have seen that other accused, who were granted bail were also absconders and after a considerable time were arrested. However, in order to rebut the argument of absconsion, the learned Counsel has stated that the applicant was arrested in 2013 in FIR No.53 of 2013, U/s 384, 385, 386 PPC, registered at Police Station Mubina Town, Karachi, and was continuously in jail but malafidely his arrest was not communicated to the trial Court; and that his absence was not deliberate but he was in custody in some other matter.

3. On the other hand, learned DPG has opposed grant of bail to the applicant on the ground that his name is mentioned in the FIR and he remained fugitive from law. In rebuttal, the learned defence counsel has relied upon the case of *Mitho Pitafi vs. The State reported in 2009 SCMR 299* wherein the

Honourable Supreme Court has held that if the accused is otherwise entitled to bail on merits, his bail cannot be withheld merely on the ground that he has remained absconder.

4. In our view, the case of the applicant is on the same footings to that of the co-accused namely Bakhat Alam, whose name is mentioned in the FIR and yet he has been granted bail by the trial Court. In the FIR, the names of 17 accused including the applicant have been mentioned but no specific role has been attributed to any one of them; and as argued some of them have been granted bail. Therefore, the rule of consistency seems attracted to the case of the applicant. It may be mentioned that on the last date of hearing, we called a progress report from the trial Court, which has been received, it shows that despite coercive efforts, the complainant and PWs are not appearing in the Court for giving their evidence and, therefore, NBWs have been issued against them. We in the circumstances of the view that applicant has been able to make out a case for grant of bail.

5. Accordingly, this bail application is allowed and the applicant is granted bail subject to his furnishing a solvent surety in the sum of Rs.1,00,000/ (Rupees one hundred thousand only) with P.R. bonds in the like amount to be executed to the satisfaction of the trial Court.

6. The bail application is disposed of in the above terms; the findings made hereinabove are tentative in nature and would not prejudice case of either party at trial.

**J U D G E**

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Rafiq/P.A.