

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Bail Application No.S-305 of 2018

Date	Order with signature of Judge
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For hearing of bail application

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Mr. Ubedullah Ghoto, Advocate for the applicant  
Miss. Rizwana Jabeen Siddiqui and , Advocate for complainant  
Mr. Aftab Ahmed Shar, Addl. P.G

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Date of hearing: 22.04.2019  
Date of order: 22.04.2019

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through this Bail Application, applicant Shah Ali son of Muhammad Umar seeks post-arrest bail in Crime No.10/2009, registered at Police Station Andal Sundrani, District Ghotki, under Sections 302, 324, 147, 148 and 149 PPC. His earlier application for grant of bail in Sessions Case No.149/2016 was heard and dismissed by the learned Sessions Judge, Ghotki vide order dated 06.08.2016.

2. Briefly stated the facts of the prosecution case are that, on 09.02.2009 at 0005 hours, complainant Abdul Hameed son of Moula Bux Chachar lodged the aforementioned F.I.R. alleging therein that Hameer son of Moula Bux Chachar was his elder brother; that accused Shahan and others were annoyed at his brother and used to say him that since he had nominated their relatives in cases, they would cause his murder; that on 08.02.2009, he (complainant) along with his brother Hameer, cousin Muslim and Arif were returning from their lands to their village and at about 8.00 p.m they reached adjacent to the house of Muhammad Umer Chachar where they saw accused Shahan, Abdul Rehman, Mehboob, Shah Ali, Shaman Ali, Abdul Qadeer and two unidentified persons with

open faces standing there, duly armed with Kalashnikovs; that accused Shahan and Abdul Rehman told his brother Hameer that they would not spare him and then all the accused started firing at them with intention to kill them, which hit to Hameer who fell down; that on firing and their cries co-villagers came running there on that the accused ran away, while Hameer succumbed to injuries at the spot.

3. During investigation police arrested co-accused Shahan and Mehboob and after usual investigation submitted the challan before the Court of 1<sup>st</sup> Judicial Magistrate, Ghotki wherein names of co-accused Abdul Rehman and Abdul Qadeer were mentioned in column-II while present applicant/accused and co-accused Shaman were shown as absconders. Hence after completing the proceedings under Section 87/88 Cr.P.C the case was sent up before the Sessions Court for trial. Thereafter, on 06.07.2016 present applicant/accused was arrested by the police and since then he is confined in judicial custody.

4. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case by the complainant; that there is a delay of four hours in lodging of F.I.R. which has not been explained by the complainant; that since the applicant had no knowledge about the lodging of F.I.R against him, his absconsion should not come in the way, if he is otherwise entitled to the concession of bail; that in fact the applicant was all the time available in his village and proceedings under Section 87/88 Cr.P.C against him was conducted without recording evidence of any person of the locality; that there is general allegations against all the accused persons and no specific role has been assigned to the applicant hence it is yet to be determined at the trial as to who caused fatal injury to deceased Hameer, hence matter requires further enquiry; that though similar role of indiscriminating firing

has been attributed to applicant/accused as well as absconding accused Shaman and remaining co-accused persons but from the spot only six empties of 7.62 m.m bore of rifle were recovered; that as per F.S.L. report all the six empties have been fired with three weapons which raises question as to whether unfortunate act was done by three persons or more, this fact alone brings the matter into the ambit of further enquiry; that the Kalashnikov is an automatic weapon and it is matter of record that the deceased Hameer was found to have suffered six injuries and the inlet size thereof is said to be three different sizes, hence the alleged act of causing firing would not be more than of three persons which negates the version of the complainant that in total eight persons took part in the murder of deceased Hameer by opening fire on him and create doubt in the prosecution case which can be extended to applicant at the bail stage. In support of his contention he has relied on the cases of *Dilmurad v. The State* (S.B.L.R. 2010 S.C 275), *Awal Khan and 7 others v. The State through AG-KPK and other* (2017 S.C.M.R 538), *Gaji alias Dodo v. The State* (2012 M.L.D 1298), *Mitho Pitafi v. The State* (2009 S.C.M.R 299) and *Ramzan and 3 others v. The State* (2008 Y.L.R 2086).

5. On the other hand, learned counsel appearing for the complainant has vehemently opposed the grant of bail to applicant on the grounds that the applicant is nominated in the FIR with specific role; that he remained absconder for a period of seven years and five months and subsequently arrested by the police after hectic efforts taken by the complainant which includes the filing of petition before this Court; that the real brother of the present applicant namely Mehboob is also implicated in this case who after being arrested by the police and obtaining bail from the Court is facing trial, therefore the plea taken by the applicant that he was not aware of lodging of the FIR against him does not appeal to mind and on the contrary it affirms that he had in fact gone underground to avoid his

arrest and even did not appear before the Court after proceedings under Section 87/88 Cr.P.C; that due to his deliberate and willful absconson, the applicant has lost his right to grant of bail; that six empties of 7.62 m.m bore were recovered from the spot which were sent for F.S.L. and the report thereof shows that out of six empties two were fired from S.M.G. rifle recovered from co-accused Shahan and since the applicant/accused had gone underground, police could not recover crime weapon from him for matching of remaining empties; that the applicant is involved in brutal murder of the deceased, hence he is not entitled for bail. In support of his contention learned counsel for the complainant relied on the cases of *Muhammad Aslam and others v. The State and others* (2016 S.C.M.R. 2094), *Sohail Waqar alias Sohaila v. The State and others* (2017 S.C.M.R. 325), *Qadar Mand v. Muhammad Amroze and 4 others* (1998 S.C.M.R. 496), *Mumtaz v. The State* (2012 S.C.M.R. 556), *Muhammad Mansha v. The State* (P.L.D 1996 Supreme Court 229), *Munawar v. The State* (1981 S.C.M.R 1092), *Muhammad Shoaib v. Muhammad Ibrahim and 4 others* (P.L.D 1995 Supreme Court 403) and *Gulzar Khoso v. The State* (2006 P.Cr.L.J. 1984).

6. Learned A.P.G while adopting arguments of learned counsel for the complainant has also opposed this application. He has added that all most all the prosecution witnesses have been examined by the trial Court and there remains only cross-examination of Medico-legal Officer and Investigating Officer while the applicant/accused is confined in judicial custody since 06.07.2016.

7. Heard the learned counsel for the parties and perused the material available on record.

8. It appears that the applicant is nominated in the F.I.R. with specific role of making firing at the deceased along with co-accused and

among the other co-accused one Mehboob is his real brother who was during investigation arrested by the police while the present applicant remained proclaimed offender for a period of seven years and five months before his arrest. The plea of the applicant with regard to his absconion that he was unaware of the fact of recording F.I.R. against him appears to be out of comprehension as his brother Mehboob was facing trial for last more than seven years, hence it cannot be comprehend that the present applicant/accused was not having knowledge of present case. Due to non-joining of the investigation by the present applicant, the police failed to recover crime weapon from him, therefore out of six empties recovered from the spot, four empties could not be matched. P.Ws have falsely implicated the applicant in their statements recorded under Section 161 Cr.P.C.

9. From the tentative assessment of the evidence available with the prosecution there appears reasonable grounds for believing that the applicant is involved in the alleged offence and since the applicant has failed to make out any case of further enquiry, his application for grant of post-arrest bail is rejected by directing the trial Court to conclude the trial by recording evidence of all remaining P.Ws within a period of ninety days hereof.

10. Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE