

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No.507 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing

03.06.2015

Syed Lal Hussain Shah, Advocate for the applicant.
Mr. Zafar Ahmed, D.P.G. Sindh

Through the instant bail application, applicant/accused Zulfiqar @ Bhutto son of Lakhadino seeks bail after arrest in FIR No.207/2014, registered at police station Belo / Sujawal, under Sections 324/147/148/149/504/337-A(i) & 337 F(i) PPC Added Section 302 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that Complainant Abdul Ghani Khado lodged his FIR at the police station Belo on 7.12.2014 at 1330 hours at P.S Belo subsequently it has incorporated in the Book of FIR of P.S Sujawal on 9.12.2014 @ 1930 hours, alleging there that the complainant is zamindar / farmer and there is old dispute of complainant with one Ramzan Soodo on lands. On 7.12.2014 the complainant alongwith his relatives Hamer, Sooz Ali, Irshad, Mehboob Ali Viko, Muhammad Hassan and Abdul Majeed at night time went to Dargah Shah Nazeer and were returning towards house when on 8.12.2014 at 0115 hours night time reached at Belo Branch Mori Shah Nazeer where the saw on the lights of torches that every one Abdul Sattar son of Fateh Muhammad Armed with repeater, Ali Ahmed @ Looti son of Ishaque @ Ramzan armed with pistol, Alam son of Jamaluddin armed with pistol, Mitho son of Ayyub armed with Lathi, Natho son of Hashim armed with

Lathi all by caste Soodo, Zulfiqar @ Bhutto son of Lakhadino armed with repeater, Sharif son of Jurionm armed with Lathi who were standing on the Mori who made direct firing in order to murder the complainant party, fringe of Abdul Sattar and Ali Ahmed @ Looti hit Hameer Khado while Zulfiqar made fire which hit Sooz Ali Khado while the Lathi holding persons caused lathi blows to Mehboob and Vikio. The complainant, Muhammad Hassan and Abdul Majeed intervened and rescued them and then the accused persons after abusing went away, thereafter the complainant after receiving letter for treatment from Belo PS brought the injured to Daro Hospital and after leaving the injured at Hospital the complainant appeared at PS and lodged the FIR. Police registered the FIR and subsequently during investigation arrested the accused and during investigation the injured Hameer expired on 18.12.2014 at Hospital, the police obtained death certificate and then added Section 302 PPC in this case and submitted the challan in the court which is now pending for trial.

3. The applicant/accused approached the learned II Additional Sessions Judge, Malir, Karachi, for post arrest bail, which was declined vide order dated 09.02.2015. Thereafter, the applicant approached this Court for grant of post arrest bail.

4. Learned counsel for the applicant contended that the applicant is innocent, no offence as alleged or otherwise has been committed by him, he has been involved in this false case in collusion with the police for ulterior motive. It is stated by the learned counsel that co-accused namely Mitho, Natho and Sharif have been granted bail by the trial Court in Crl.Bail.Appln. No.90/2015 by order dated 27.02.2015 and the case of the applicant / accused is on same footing and case of the applicant is very

much identical to co-accused persons and principle of consistency is applicable in the above matter. It is further contended that offence took place on 08.1.2014 at 0115 hours but the FIR was lodged on 9.12.2014, at 1330 hours after delay of one day, sufficient time with the complainant for consultation and prepare the program to falsely involve the innocent person which creates doubt in the prosecution case. It is contended that as per contents of FIR incident took place at 1:15 a.m odd hours and no light was available to identify the applicant / accused and it is not possible for the complainant who seen the incident in the light of torch and identified all accused persons alongwith their roles. He lastly argued that applicant is in custody but not a single witness has been examined by the prosecution and the delay has not been attributed to the applicant, as such, concession of bail may be granted to the applicant. In support of his contentions, learned counsel for the applicant has relied upon **2008 SCMR 173** Muhammad Daud and another ..Vs.. The State and another.

5. Learned Additional Prosecutor General Sindh argued that since the applicant has committed a heinous offence as such he is not entitled to concession of bail. He opposed the bail application.

6. After hearing the learned counsel for the parties and going through the record, it has been noticed that other co-accused have been granted bail and principle of consistency will also apply to the present applicant/accused. At the bail stage, tentative assessment of material collected during investigation is to be made. Benefit of doubt even for limited purpose of bail is to be extended to the applicant/accused in the circumstances of case. Applicant/accused is in jail yet charge has not been framed.

7. For the above stated reasons, *prima facie*, there are sufficient grounds for further inquiry into his guilt as contemplated under subsection (2) of Section 497 Cr.P.C. Concession of bail is extended to the applicant/accused Zulfiqar @ Bhutto son of Lakhadino subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (*Rupees One Hundred Thousand*) and P.R bond in the like amount to the satisfaction of trial Court.

8. 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/accused on merits.

JUDGE

SM