

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD.**

Cr. Bail A. No.S-868 of 2014.

Date of hearing: 15-09-2015.

Date of decision: 16-09-2015.

Mr. Sajjad Ahmed Chandio, Advocate for the applicant.

Syed Meeral Shah, Deputy Prosecutor General Sindh.

Mr. Muhammad Sachal R. Awan, Advocate for the complainant.

**NAZAR AKBAR, J:** - Through the instant application, applicant Yousuf seeks post-arrest bail in Crime No.27 of 2009, registered with Police Station Drigh Bala, District Dadu, under sections 302, 324, 337-H(ii), 504 P.P.C.

2. Brief facts of the case are that on 02.08.2009 at about 8:30 p.m. an incident of sudden free fight took place in front of Hotel of Mehboob Gurmani. Both the parties were carrying firearms and lathi/danda and iron rod etc. As soon as complainant, who are having dispute over piece of land with accused party reached the place of incident, they found accused/applicant were standing in front of the hotel. They allegedly threatened the complainant party that they would kill them as they were not withdrawing from the disputed land. The fight started in which both complainant and accused parties sustained injuries. Thereafter, at first accused and later complainant party appeared at police station and disclosed the facts of the incident, which were incorporated in daily diaries bearing No.10 and 11, respectively. In daily diary No.11, recorded by the complainant party, the name of the present accused was not mentioned however, later on after a gap of 22 hours one Abdul Razzak (member of complainant party) again appeared at Police

Station and registered the present F.I.R. (27 of 2009) in which firearm injury caused by straight pistol shot which hit Ghulam Ali in his ribs and proved fatal was attributed to the present accused. In the cross FIR bearing No. 28 of 2009 lodged by the accused party through Qamaruddin Gurmani, amongst others, allegation contained pistol shot injury with intention to murder Gul Sher, nephew of accused, which hit him in his right leg was attributed to Allah Bachayo from complainant side.

3. Learned counsel for the applicant contended that this is a case of counter version and which version is correct is to be seen at trial. All P.Ws. are interested and no private person has been cited as P.W. or mashir; that first F.I.R. bearing Crime No.28/2009 was registered by the accused party and the accused nominated in the said F.I.R. have been enlarged on bail by the trial Court, therefore, the applicant is also entitled for the grant of bail. It is further contended by the counsel for the applicants that it was not a premeditated murder rather it was a case of sudden provocation / attack by the complainant party who have come at the place of incident where the accused were already present and therefore it cannot be said that the accused party is aggressor and further it cannot be a case of a planned murder of deceased Ghulam Ali. He has specifically pointed out that the accused party has reached the police station at 6:00 p.m. on 3.8.2009 for lodging an FIR of the same incident in which accused nephew Gul Sher has received firearm injuries at the hands of complainant party by the pistol shot of Allah Bachayo and their FIR has been registered as FIR No. 28 of 2009 and as against the accused party FIR the complainant party has reached the same police station after half an hour at 6:30 p.m. on 3.8.2009 and their FIR has been registered as FIR No. 27 of 2009 meaning thereby the that the prosecution is somehow under the influence of the complainant

party as the FIR lodged subsequent in time has been shown as registered before the FIR of accused party which ought to have been registered earlier.

4. Learned counsel for the complainant and learned D.P.G. opposed this bail application, amongst others, on the grounds that the applicant has committed a heinous offence has been nominated in the F.I.R. with specific role, therefore, he is not entitled for grant of bail. The counsel for complainant and DPG have not been able to explain the circumstances in which the FIR of accused party who had reached the police station before the complainant party had been registered subsequently as it is FIR No. 28 of 2009 and how the FIR of complainant who reached after the accused party at 06.30 p.m. got their FIR registered as FIR No. 27 of 2009. However, both have claimed that the contents of two FIRs have a material difference inasmuch as in the FIR lodged by accused party the injuries have not been found fatal even by the injury caused through the pistol shot of Allah Bachayo.

5. I have given anxious consideration to the arguments advanced by the parties and perused the material available on record.

6. It is well settled by now that in case of counter version which party is aggressor and which party was aggressed one is to be examined at trial. The record shows that the complainant party lives in another village and they came to the spot where the applicant and his companions were available and a sudden fight between them took place. In the facts and circumstances of the case it could not be said that this was a case of premeditated murder. The accused nominated in the first F.I.R. lodged by the applicant party though it is numbered as 28 of 2009 were admitted to bail by the trial Court. No doubt the role attributed to the present applicant is the injury caused by him to the non-vital part of the body to the deceased proved to be fatal. The

applicant is in continuous custody since the date of his arrest i.e. 14.3.2013 and is no more required for investigation.

7. In somewhat identical circumstances the Hon'ble Supreme Court in the case reported as 2009 SCMR 324 Noor Muhammad v. The State has granted bail to the accused in the case of two FIRs of the same incident in which only one person has died and the accused was nominated with specific role. The bail was granted by the Hon'ble Supreme Court by setting aside the order of courts below including High Court. The relevant portion is reproduced below:-

3. Indeed, the ground that prevailed with the Courts below in declining bail to the petitioner was the fatal injury to the deceased was caused by a bullet allegedly fired at by the petitioner through his pistol. Nevertheless, it could not be said that this was a case of premeditated cold-blooded murder. It is yet to be determined that to which of the party was the aggressor and whether capital punishment or that of imprisonment for life could be awarded in the circumstances.
4. All the accused persons from both the sides have already been granted bail at one stage or another. Taking all factors into consideration coupled with the fact that the petitioner has already remained in custody for more than a year we are inclined to think that the concession of bail may also be extended to him.

8. In view of the above facts and circumstances and the law this bail application is allowed, the accused may be enlarged on bail subject to furnishing two solvent sureties each of Rs. 3,00,000/- [Rupees Three Lacs only] and PR bond in the like amount to the satisfaction of trial court.

9. The findings made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of the same while deciding the main case on merits.

JUDGE

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