

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

Cr. Bail A. No.S-867 of 2015.

Date of hearing and decision: 18-09-2015.

Mr. Faiz Muhammad M. Larik, Advocate for the applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

NAZAR AKBAR, J: - Through the instant application, applicant Farooq seeks post-arrest bail in Crime No.09/2014, registered with Police Station Rajo Dero, District Dadu, under sections 302, 324, 337-H(ii), 114, 148, 149 P.P.C.

2. Brief facts of the case are that on 20.10.2014 at about 11.00 a.m. when complainant alongwith his brother Niaz, nephews Pervez, Sattar, cousin Saleh, Azam and Shahmeer was available at their agricultural land situated at Ketu Ghaloo, applicant/accused alongwith 89 co-accused duly armed with deadly weapons came there and on the instigation of co-accused Soonjharo all remaining accused assaulted and fired at them, with the result five persons, namely, Niaz, Pervez, Sattar, Saleh and Shahmeer after receiving firearm injuries on the different parts of their respective bodies lost their lives. During the incident, the applicant/accused is alleged to have made aerial firing. Thereafter, complainant lodged the F.I.R.

3. Learned counsel for the applicant mainly contended that there is a delay of about 07 days in lodging of the F.I.R, which has not been explained plausibly; that the applicant has falsely been implicated in this case due to enmity with malafide intention; that no specific role has been attributed to the applicant for causing any gunshot injury to any of the deceased; that the allegation against the applicant is

only of simple presence as well as making aerial firing; that the applicant is behind the bars since his arrest; that nothing indiscriminating has been recovered from the possession of the applicant; that no direct evidence is available on record to connect the applicant with the commission of alleged offence; that all P.Ws. are interested and no private and independent person has been cited as P.W. or mashir; that the case of the applicant requires further inquiry as contemplated under section 497(2) Cr.P.C. In support of his contention, learned counsel for the applicant relied upon the cases of **MUHAMMAD v. THE STATE (1998 S C M R 454)**, **MUHAMMAD IRFAN v. STATE (2014 S C M R 1347)** and **SOONHARO v. THE STATE (S B L R 2006 Sindh 1493)**.

4. Learned D.P.G. opposed this bail application, amongst others, on the grounds that the applicant alongwith his 89 companions has committed a heinous offence and caused murder of five innocent persons; that the applicant has been nominated in the F.I.R. with specific role, therefore, he is not entitled for grant of bail.

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

6. Despite the fact that in the incident five persons have lost their lives the complainant party did not bother to lodge a prompt F.I.R. in order to rope the culprits and they lodged the present F.I.R. against as many as 90 persons nominating them with their real parentage as well as the arms carrying by them at the time of incident; that also there is a delay of seven days in lodging of the F.I.R, which has not been explained plausibly; that there is admitted enmity in between the parties; that per F.I.R, at the time of incident the applicant was armed with gun but he has only made aerial firing and did not cause any injury to either any of the deceased or the P.Ws; that determination of vicarious liability and sharing common intention by

the applicant requires further inquiry; that the tentative assessment of the evidence available on record makes the case of the applicant as of further inquiry; that mere heinousness of offence cannot be made as a ground for refusal of bail. Though the applicant is nominated in the F.I.R. but no specific role has been assigned.; that taking into consideration all these facts and circumstances the case of the applicant falls within the ambit of further inquiry as envisaged under section 497(2) Cr.P.C.

7. Above are the reasons of short order dated 18.09.2015, whereby the applicant was granted bail subject to furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Lac only) and PR bond in the like amount to the satisfaction of trial court.

8. 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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