

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

Cr. Bail A. No.S-638 of 2015.

Date of hearing and decision: 23-09-2015.

Mr. Hidayatullah Abbasi, Advocate for the applicant.

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

Mr. Nisar Ahmed Durrani, Advocate for the complainant.

NAZAR AKBAR, J: - Through the instant application, applicant Ghulam Rasool seeks post-arrest bail in Crime 12/2015, registered with Police Station Badin, under sections 392, 394, 34, 337-H(ii) PPC r/w sections 17(2) & 17(4) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and sections 109, 120/B, 201 and 302 P.P.C.

2. Brief facts of the case are that on 17.01.2015 at 1430 hours complainant Shakeel Ahmed appeared at Police Station and lodged F.I.R. stating that they own a flour machine situated at Kadhan Bus Stop in Badin town. On the day of incident, complainant alongwith his brother Abdul Shakoor was sitting in the cabin of the said flour machine when at about 11.45 a.m. two persons came there and took out pistols from the folds of their shalwar and aimed towards them and directed to keep silent. Thereafter, the culprits picked up the "Thelli" containing Rs.500,000/- from the table and also snatched Rs.7,300/- from the complainant, Rs.1,800/- from P.W. Yaseen and one Mobile 100 of Nokia Compnay and went out. The complainant followed them and caught hold them. During the scuffle Muhammad Ramzan Mandhro also came there. Thereafter, both culprits made straight fire from their respective weapons at complainant party, as a

result of which, Abdul Shakoor and Ramzan received firearm injuries on different parts of their respective bodies. Thereafter, the accused tried to run away, but their motorcycle went out of order and they snatched a motorcycle from one passerby who was by chance reached there, and fled away by riding the said motorcycle. The injured were taken to hospital where Abdul Shakoor succumbed to his injuries while Ramzan was referred to Civil Hospital Hyderabad. Thereafter, complainant lodged the F.I.R.

3. Learned counsel for the applicant mainly contended that there is a delay of about 12 days in lodging of the F.I.R, which has not been explained plausibly; that initially the applicant has not been nominated in the F.I.R. as well as statements of P.Ws. Abdul Hamid and Noor Muhammad, but in his further statement recorded on 05.02.2015, the complainant nominated the applicant as an abettor and involved him in the present offence; that the applicant has falsely been implicated in this case due to enmity and with malafide intention; that no specific role has been attributed to the applicant; that the applicant is behind the bars since his arrest; that nothing incriminating 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 **Mir Hazar Malik v. State (1999 S C M R 1377)** and **Saeed Chandio v. State (2009 M L D 1407)**.

4. Learned counsel for the complainant and learned A.P.G. opposed this bail application, amongst others, on the grounds that the applicant alongwith his companions has committed a heinous

offence and caused murder of one innocent person; that the applicant has been nominated by the complainant 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 two persons have lost their life and others have received injuries, 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 unknown persons; that there is a delay of 12 days in lodging of the F.I.R, which has not been explained plausibly; that the applicant has been implicated in the present case after about one month on the basis of extra-judicial confession allegedly made by the applicant before the complainant party, which cannot be relied upon alone as a strong piece of evidence to connect him with the crime; that determination of vicarious liability and sharing common intention by the applicant requires further inquiry; that mere heinousness of offence cannot be make as a ground for refusal of bail; that the tentative assessment of the evidence available on record makes the case of the applicant as of further inquiry as envisaged under section 497(2) Cr.P.C.

7. In view of above, the application is allowed and the applicant is admitted to post-arrest 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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