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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st. CrI. Bail Appln. No.S-382 of 2014.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Hearing.

06.10.2015.

Mr. Habibullah G. Ghouri, advocate for the applicant
along with applicant.

Mr. Abdul Sattar Qazi, advocate for the complainant
along with complainant.

Mr. Shahzad Saleem Nahiyoan, A.P.G.

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SALAHUDDIN PANHWAR, J- Applicant Muhammad Yahya seeks pre
arrest bail in Crime No.119 of 2014 registered at Police Station
Saddar Kamber, under sections 324, 337-H(ii), 34, PPC.

2. Succinctly, the case of prosecution is that complainant
Imran Khan lodged FIR against the applicant/accused stating therein
that on 11.6.2014 in the morning, he, his father Nusrat Hussain and
uncle Muhammad Ayoob went to land for cultivating purpose; it was
8:00 am four persons covered there, they identified them as Yahya,
2. Zahid Hussain both sons of Asmatullah and two unidentified
accused persons, all having pistols in their hands, On reaching they
asked his father Nusrat Hussain that you have been restrained, even
then cultivating the land. By saying so, Muhammad Yahya caused
direct fire upon Nusrat Hussain with intention to commit murder,
which hit him who fell down by crying. The complainant party raised
cries and went towards them, then all the accused made aerial firing
and escaped away towards southern side. The complainant and his
uncle went over the injured and found injury on left side of
throat (through and through). The blood was oozing; was
unconscious. Then complainant party took the injured to Hospital

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where they remained busy in treatment and then left the injured and his uncle at hospital appeared at Police Station, where FIR to the above effect was lodged.

3. Learned counsel for the applicant contended that there is admitted dispute between the parties over the land and such dispute is admitted by the complainant hence false implication of the applicant cannot be ruled out; there is delay of eleven hours in lodgment of FIR, though the distance between the alleged place of incident and Police Station is only 5/6 kilometers; such distance can be covered within few minutes; the applicant is Assistant District Public Prosecutor in the Court of learned Judicial Magistrate, Miro Khan, on the day of alleged incident the applicant was present on his duty since 08:00 a.m; such attendance certificate is issued by learned Judicial Magistrate, Miro Khan; that injury on the person of injured Nusrat Hussain is simple and superficial in nature.

4. Learned counsel for the complainant contended that P.Ws have fully supported the version of complainant in the statements recorded under section 161, Cr.P.C; that present applicant is named in the FIR with specific role of firing upon the injured Nusrat Hussain with his pistol on his neck, which is vital part of the body. He further contended that as far as contradiction of ocular and medical evidence is concerned, it needs appreciation of evidence and at bail stage only tentative assessment is to be made. In the last he has prayed that interim bail granted to the applicant may be recalled. In support of his contention he has relied upon the cases of Dildar Baug v. The State 1998 SCMR 358, Amjad Jawed v. The State PLD 2007 Karachi 336 and Mir Hassan v. The State 2012 MLD 377.

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5. Learned A.P.G has opposed the confirmation of bail to the applicant and has supported the arguments advanced by the learned counsel for the complainant.

6. I have heard learned counsel for the parties, perused the material available on record with their assistance.

7. Admittedly the name of the present applicant transpires in the FIR with specific role of causing firearm injury with his pistol on the neck of injured Nusrat Hussain. The P.Ws in their statements recorded under section 161, Cr.P.C have fully supported the version of the complainant. Delay in lodgment of FIR has been explained plausibly by the complainant mentioning in the FIR that they took the injured to Hospital where they were busy in treatment; naturally the complainant party was firstly supposed to save the life of injured and sufficient time could be consumed where the life of the person was at stake. As far as contention of the learned counsel for the applicant that applicant is serving as Assistant District Public Prosecutor in the Court of learned Judicial Magistrate, Miro Khan and on the day of alleged incident the applicant was present on his duty, in this regard, it is worth to add here that plea of alibi cannot be considered at bail stage, such aspect of the case shall be considered by the trial Court while deciding fate of the case. Reference can be made to the case of Ghulam Ahmed Chishti v. the State 2013 SCMR 385. Even otherwise, the applicant has not been able to show a single circumstance or consideration which could have justified his plea of being falsely or *mala-fide* involvement; it is matter of record that victim is cousin and brother in-law of applicant hence plea of false implication is not appealable to a prudent mind. It is worth to add here that to earn the extraordinary relief of *pre-arrest bail* the accused must not only show existence of reasonable grounds leading to a

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belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt but he is also required to show that his arrest is being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonour him, as held in the case of Rana Muhammad Arshad v. Muhammad Rafique & another (PLD 2009 SC 427). In the instant case the accused not only failed in bringing their case within scope of Section 497(2) of the Code but also failed to establish any malafide on part of the SHO(complainant). Such failure on part of the applicant/accused would disentitle him from earning concession of extraordinary relief of pre-arrest bail.

8. In the circumstances, there is sufficient material available on record to connect the present applicant with the commission of the crime. The ingredients of section 324, PPC are fully attracted in the case in hand. Even otherwise, it is well settled principle that in non-bailable case, bail cannot be claimed as a matter of right and can be declined even in respect of offences which do not fall under prohibitory clause of section 497, Cr.P.C.

7. In view of the above-mentioned facts, circumstances and reasons, instant bail application is devoid of merits and interim bail already granted to the applicant by order dated 02.9.2014 was recalled; these are the reasons of short order dated 06.10.2015 in support thereof.

Judge 13/10/2015

M.Y.Panhwar/**