

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

Cr. Bail Appln: No.S-989 of 2016.

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing.

02.01.2017.

Mr. Amjad Ali Sahito, Advocate for the applicant.
Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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OMAR SIAL,J- This post arrest bail application has been filed by the accused/applicant, namely Azhar Ali s/o Abdul Majeed in crime number 22/2016 u/s 324 and 353 registered in the P.S. Loonikot, Jamshoro against four accused, namely, Azhar Ali, Faisal Jumani, Ali Adil Jumani and Muhammad Lanjwani. Apart from the accused/applicant Azhar Ali, the remaining accused have already been granted bail by this Court.

Brief facts of the prosecution case are that on 26-8-2016 at about 1800 hours a Vigo car was coming on the wrong side of the road on the Karachi-Hyderabad highway near Baran Bridge where construction work was being carried out by the Frontier Works Organization. The complainant, Sikander Nazeer – an employee of the FWO was present there along with other labour and officers of the FWO which also included Lt. Col. Qaiser Khan. The occupants of the vehicle were stopped from continuing driving on the wrong side by the FWO personnel, which subsequently led to an altercation between the parties. Four people (the accused) alighted from the Vigo amongst which one was a police official assigned by the police for the security of the family of the other occupants of the car, namely Azhar Ali, the present accused/applicant. The accused/applicant opened a burst of fire on the complainant who ducked the fire and consequently the bullet hit Lt. Col. Qaiser Khan. A case was registered and the accused arrested. The accused/applicant applied to be enlarged on bail but the learned Additional Sessions Court-I, Kotri in Special Case No. 237 of 2016 dismissed the said application on 14-11-2016.

I have heard the learned counsel for the accused/applicant as well as the learned APG and have also perused the record with their able assistance. None appeared on behalf of the complainant.

My observations are as follows:

1. The incident has occurred on 26-8-2016 at 1800 hours whereas the FIR has been registered on 27-8-2016 at 1530 hours. The explanation given by the complainant for the delay is that all the accused were apprehended on the spot by the FWO staff. The complainant along with another FWO employee Naimatullah took their injured colleague to the CMH Hospital for treatment and the next day went to the police station with the accused, vehicle and weapons to lodge the FIR. This prosecution story for the delay prima facie seems far-fetched and doubtful.
2. The mashirnama is also admittedly made in the police station on 27-8-2016. All the accused and case property is handed over to the police by the complainant and upon his saying so, the police arrest the accused and make a memo of arrest and recovery in the police station. The mashirnama is witnessed by the complainant party. Prima facie the authenticity and accuracy of such a memo and its contents is doubtful.
3. Surprisingly, on 28-8-2016 at 1800 hours the complainant party returns and hands over two empties to the police allegedly fired from the official weapon of accused/applicant. The witnesses to this mashirnama is also the complainant party. Prima facie the authenticity and accuracy of such a memo and its contents is doubtful.
4. The accused/applicant has attached photographs of the accused/applicants which show that they have been badly beaten and tortured. The learned APG does not deny the photos but argues that the wounds and bruises shown were caused when the accused/applicants fell on the ground while trying to escape from the FWO personnel who apprehended them on the spot of the incident. A cursory look at the photos evidences that by no stretch of imagination are these wounds caused by a fall. The police in the mashirnama made at the time the accused along with the case property were handed over to the police by the complainant party have also noted the marks of violence on their bodies. The accused were then sent by the police for medical check up to the Liaquat University Hospital Hyderabad where the MLO officer also issued medical reports for all four accused stating the injuries. The MLO's report again indicates that the injuries to the accused were not caused due to a fall on the road. The learned counsel for the accused/applicant's argument that all four of the accused/applicant's were forcefully taken away by the complainant party and beaten and tortured for the altercation for a day before they were handed over to the police, prima facie seems to have weight.
5. There is no independent eye witness to this incident cited which admittedly has occurred in an immensely busy area in the evening. Yet, the witnesses to all mashirnamas as well as the prosecution witnesses cited in the challan are all FWO official or police officials.
6. The police on 1-9-2016 send the weapons (one pistol and one rifle, allegedly recovered from the accused) to the Forensic Science Laboratory.

The FSL reports that it cannot give a definite opinion as to when the weapons were last fired. Surprisingly, the empties given to the police by the complainant as having being fired from the rifle were not sent to the FSL to confirm whether the same were discharged from the weapon of the accused/applicant or not. This fact in itself weakens the prosecution story.

7. A FIR bearing number 27 of 2016 u/s 114, 342, 353, 506(2), 504, 147, 148, 149, 337-A(ii), 337-A(iii) PPC has been registered against the complainant party by the accused for the same incident on 8-10-2016 in P.S. Loonikot, Jamshoro. When asked why the delay in lodging this FIR has occurred, the accused/applicant counsel's stated that initially the police would not register their FIR and hence an application u/s 22-A & B Cr.P.C 1898 was filed before the learned Sessions Judge Jamshoro subsequent to which the FIR was registered. It appears to be a case of cross versions.
8. I have also perused the medical certificate issued in connection with Lt. Col. Qaiser Khan, who is allegedly the recipient of the firearm injury from the accused/applicant. In one place the certificate states that the injured was brought in to the hospital on 26-8-2016 whereas on another place in the same certificate it states that he was brought in on 27-8-2016. The time given for his arrival at the hospital is 5:40 p.m. If the date of 26-8-2016 is correct for his arrival, it means that he was brought to the hospital before the time of incident. If the date of 27-8-2016 is correct then it means the prosecution story for the delay in launching the FIR is incorrect. There is overwriting in the time of incident column as well as a cancellation on the address of the injured. The medical certificate, prima facie, creates further doubt in the prosecution story.
9. Despite a passage of over four months the charge has still not been framed in the trial court. Three co-accused have been granted bail by this Court earlier. The case of the present accused/applicant is on slightly different footing than the rest as he has been nominated as the person who made the fire, yet sufficient doubt has been created to make this a case for a further enquiry.

In view of the observations made above, I am of the view that this is a case of further enquiry. Accordingly, the accused/applicant Azhar Ali s/o Abdul Majeed is admitted to bail subject to his furnishing a solvent surety in the amount of Rs. 300,000 (Rupees three hundred thousand) together with a PR Bond of a like amount to the satisfaction of the trial court.

JUDGE.