

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

Cr. Bail Appln: No.S-540 of 2016.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing.

02.01.2017.

Mr. Farhad Ali Abro, Advocate for the applicant.  
Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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**OMAR SIAL, J-** This is a post arrest bail application filed by accused/applicants Waqas Khehro s/o Pir Bux and Ghulam Abbas Khoso s/o Ali Sher who have been accused of offences u/s 324, 34 PPC in an FIR registered at P.S. Qasimabad, Hyderabad.

The brief facts of the prosecution case are that on 16-4-2016, the complainant wanted to off load a generator from his truck for which purpose he needed a few bricks to support the chain being used to off load the generator. Four of his employees, namely, Abdul Sattar, Atta Mohammad Chandio, Ghulam Mustafa and Jalal Bheel strayed on an open plot of land owned by SSGC to pick up the bricks from there. The SSGC guards (who are the present accused/applicants) got annoyed at this act of the four individuals and after a verbal altercation fired at them injuring all four. The accused/applicants were arrested subsequent to which they filed a bail application before the learned Sessions Judge, Hyderabad. The bail application was rejected on 13-6-2016.

I have heard the learned counsels for the accused/applicants and the learned APG and also gone through the record with their able assistance. Seven notices were issued to the complainant but he has chosen to stay absent to date.

My observations are as follows:

1. There is a delay of three days in the filing of the FIR. This delay has been attributed by the parties to attempt to somehow settle the matter. As the incident, the involvement of the parties and the manner in which it has taken place is not denied by either party, this delay in my opinion, becomes less/relevant.
2. The learned counsel for the accused/applicants in his argument has concentrated on the fact that the accused/applicants were security guards and if someone took something from the land of Sui Southern Gas Company (SSGC) what else would they do but protect the property. In other words, the shooting by the accused/applicants and the victims being hit thereby is not denied but it has been justified on the ground of self defence. The Hon'ble Supreme Court in a case reported at 2011 SCMR 45 (Mushtaq Hussain vs The State) has observed that an accused relying on the benefit of private defence is responsible to show that he was not responsible or at fault; that he honestly believed that his life was under immediate danger; that he also reasonably believed that he could not escape and

that he had no intention to cause more harm than necessary. Prima facie the accused/applicant has failed in fulfilling these conditions.

3. SSGC in a letter dated 16-4-2016 written to the SHO Qasimabad, Hyderabad has asked that an FIR be lodged against the four people who were hit by the repeater fires of its guards. In its letter it states that the four people were picking bricks, when asked to stop, they hurled abuses and threw stones. The letter also states that they subsequently fired at the SSGC guards. It appears that the FIR was not lodged, neither has SSGC followed it up or made any attempt to pursue the matter. Prima facie the evidence on record at the moment does not support the claim of firing by the four victims on the SSGC guards. Neither of the accused/applicants has been injured in this incident from the alleged firing of the victims and neither has any name of any person been given as having been injured either from stones or firearms.
4. All four people who have been injured have admittedly been hit by pellets in their face and head apart from other parts of their bodies. The accused/applicants fired directly at them, which fact is not denied. The accused/applicants would have been aware that firing from repeaters directly at the four people could result in death. Section 324 PPC with which the accused/applicants are charged could carry a sentence of ten years and would thus fall within the prohibitory clause of section 497 Cr.P.C.

In view of the above reasons, the bail application of the accused/applicants is dismissed. The trial court is directed to conclude the trial within three months from the date of receipt of this order.

JUDGE.