

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

Cr.Bail.Appl.No.S- 476 of 2016

DATE ORDER WITH SIGNATURE OF JUDGE

08.06.2017.

Mr. Hameedulah Dahri, Advocate for applicant.
Mr. Muhammad Jameel Khan, Advocate for complainant.
Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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Through instant bail application, applicant is seeking post arrest bail in Crime No.97 of 2015 registered at PS Shahdadpur u/s 302, 34 PPC.

2. Precisely, the relevant facts of the case are that due to land dispute applicant alongwith co-accused persons attacked upon the complainant party; accused Dildar caused fire shot injury to the deceased Abdul Jabbar who received on his chest and subsequently succumbed to the injuries.

3. At the outset learned counsel for the applicant contends that specific role is not assigned to the applicant with regard to causing any injury; deceased received one injury which is specifically alleged against accused Dildar; applicant's role is shown that he was accompanying with the other accused persons hence the question of common intention requires further probe. In support of his contentions, learned counsel has placed reliance on the cases reported as 2014 SCMR 1347, 2012 SCMR 1137 and 2016 MLD 886.

4. Learned A.P.G. is not disputing the facts as narrated by the counsel for the applicant, however counsel for the complainant contends that applicability of Section 34 PPC is very much available in this case; applicant joined the other accused persons and by their act one young

person lost his life. He placed reliance on the case reported as 2014 P.Cr.L.J. 1415.

5. There can be no denial that mere appearance of one's name in FIR is never sufficient to snatch his *otherwise* guaranteed but the law always requires *prima facie* existence of reasonable grounds so as to make the Court believe that accused is *guilty* of an offence falling within prohibitory clause. To *curtail* the liberty of a person is a *serious* step in law therefore even while making *tentative* assessment the judicial scale must be allowed to tilt wherever available *material* takes it. Refererence may be made to the case of Zaigham Ashraf v. State & Ors. 2016 SCMR 18 wherein it is held as:

“9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion *albeit* tentatively however, this exercise shall not be carried out in a vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable grounds. Therefore, extraordinary care and caution shall be exercised by the Judges in the course of granting or refusing to grant bail to an accused person, charged for offence (s), punishable with capital punishment. The Courts are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.”

This has been basic *objective* because of which it is by *now* a well settled principle of law that where an accused of capital punishment *even*, if succeeds showing absence of reasonable grounds towards his being *guilty*, the accused is entitled for bail not as a matter of grace but as of *right*.

It is settled principle of law that the *normally* question of vicarious liability is one of *further* inquiry unless other compelling reasons exist to

reach a different conclusion (2010 SCMR 1178). This being so, such *question* is *normally* left open for the trial Court to decide. Admittedly, there is no *active* role assigned to the applicant / accused except that of his *alleged* presence which in *absence* of any active role would make the case open for further probe particularly when two *other* accused persons, similarly charged, were placed in column-II by the investigating agency while submitting the charge sheet. It is also a matter of record that deceased received one injury which has *categorically* been assigned to the accused Dildar. All these circumstances *prima facie* show that there are no *other* exceptional circumstances which could make an *exception* to principle of law that *question* of common intention is one of further probe. These facts show that this is the case of further inquiry. Accordingly, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees two lac) and P.R. Bond in the like amount to the satisfaction of the trial Court.

JUDGE

Tufail