

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

Cr.Bail.Appl.No.S- 550 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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09.06.2017.

Mr. Ghulam Sajjad Gopang, Advocate for applicant.

Mr. Ali Ahmed Palh, Advocate for complainant.

Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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SALAHUDDIN PANHWAR, J: Through instant bail application, applicant Sunel alias Babloo is seeking post arrest bail in Crime No.26 of 2013 registered at PS Nasarpur u/s 395, 396, 397 PPC r/w Section 17(3)(4) E.H.O.

2. The brief facts of the case of prosecution as narrated in the FIR are that on 12.10.2013 at 1800 hours, complainant Taro Mal lodged FIR at P.S. Nasarpur, stating therein that he has a Kiryana Shop at Nasapur on Tando Allahyar. On 11.10.2013 he alongwith his brother Topan Das, nephew Daleep Kumar, Haresh Kumar, Santosh Kumar were available in the shop when at 1.55 p.m five armed persons came on tow motorcycles entered into the shop and on the force weapons, snatched three mobiles from complainant party and accused persons also snatched Rs.2,50,000/- from the counter table of said shop. One accused had pointed pistol on his brother Topan Das and demanded other bags of amount, and on such demand his brother replied that he has no more amount, on which armed person abuses his brother Topan Das and mad straight fire which hit on his right chest and he fallen down and on which his nephew Daleep Kumar had tried to apprehend the accused but the other accused made fire which hit him and he also fallen down. Thereafter, all the accused persons went away on motorcycles and

peoples of the locality had gathered there and police also came there. Thereafter, complainant party took injured Topan Dad and Daleep Kumar to Civil Hospital, Tando Allahyar had given first aid to injured Daleep Kumar and then referred to LMUH, Hyderabad. After Post mortem of deceased Topan Das, the dead body was brought to their village Thano Ahmed Khan. After funeral ceremony, complainant came at PS and lodged the FIR.

3. In support of present bail application, learned counsel for the applicant has contended that application is innocent and has been falsely implicated in the present case due enmity with complainant party; that name of present applicant is not appearing in the FIR but subsequently police got implicated him in the final report; that no identification parade was held before Magistrate; that case of present applicant requires further enquiry, hence, bail may be granted to the applicant. Besides he contends that the applicant is also entitled for bail on the statutory ground as only on the nine times the matter was adjourned due to absence of the defence counsel whereas rest of the date of hearings the prosecution failed to examine any witness before the trial court. The learned counsel for the applicant has relied upon the cases reported as 1998 SCMR 228, 1985 SCMR 1509, 2017 SCMR 728, PLD 2012 Sindh 147, 2011 MLD 155 and 2008 P.Cr.L.J. 1512.

4. In contra, learned A.P.G. as well as learned counsel for the complainant have strongly opposed the present bail application and submitted that one person was killed during robbery, while another person was seriously injured, hence offence is serious in nature and present accused was identified by eye witnesses. It is also submitted that case is fresh one and offence falls under the prohibitory clause of Section 497 Cr.P.C. While assisting prosecution, the learned counsel for complainant has strongly opposed the release of applicant/accused on bail and

pointed out that offence was committed in rash and brutal manner. Examination in chief of the eye witnesses is recorded but since six months defence side is avoiding to cross examine them.

5. As per FIR, five persons, while duly amend, had entered in the shop of complainant and robbed cash as well as Mobile phones and without any resistance or provocation first fired on brother of complainant and thereafter injured nephew of complainant. As a result Topan Das, brother of complainant died while nephew of complainant namely Daleep Kumar was seriously injuries. There is no denying that FIR was lodged against unknown persons but this *fact* alone is never sufficient for one to claim bail as a matter of right in a case of *capital* punishment else the *legislature* would not have confined *release* of an accused, charged for an offence of capital punishment, to existence of reasonable grounds towards his *innocence*. It is worth to add that *legally* the FIR is meant only to bring the law into motion. It is consequence of such *motion* (investigation) whereby material is collected / gathered through which the Court has to see whether there exists reasonable grounds to believe the accused linked with charged offence or *otherwise* which exercise is also *limited* to **tentative assessment**. Perusal of the record shows that in further statement of complainant recorded on 25.10.2013 the complainant had disclosed the names of present accused and one Ikhtiar Hussain and *prima facie* there is no legal justification which could be accepted that complainant has such a *serious* motive against applicant / accused which prompted him to involve innocent person in a case, involving blood of his real brother. Further, perusal of police papers shows that present applicant/accused was produced before Judicial Magistrate-II, Tando Allahyar for identification purpose. The identification proforma is available in case file, and perusal of it reveals that complainant Taro

Mal and P.W Santosh Kumar, eye witness of the incident, had duly identified the present applicant/accused as the culprit who had committed the offence and killed Topan Das. The identification proforma shows that applicant/accused has raised objection that the concerned Police had already shown him to the witnesses before the identification parade. It is not a proper stage to discuss the irregularities and *illegalities*, if any, committed by the Investigating officer or the Magistrate, in completing process of identification, as it *shall* not only amount to *deeper appreciation* but shall also prejudice the case of *either* sides which is not permissible at bail stage *however* what can be *tentatively* concluded is that eye-witnesses of case, including complainant, have been continuing pointing their fingers at applicant as one of the culprits. The perusal of the record also reveals that during investigation applicant/accused was arrested alongwith crime weapon and motorcycle, used in the commission of offence. During interrogation accused Ikhtiar Hussain and Sunil alias Babloo had disclosed the name of another accused. These are circumstances (material collected during course of investigation) which *prima facie* show existence of reasonable grounds to believe that applicant / accused is involved in a case of *capital* punishment wherein the *culprits* deliberated to choose a manner which *itself* is sufficient to establish seriousness rather *brutality* hence, *at this stage*, it cannot be accepted that present applicant/accused is falsely involved at the instance of complainant party in a case wherein the real brother of complainant lost his life. It if further transpired from case file that present matter was received to this Court in January 2015, and on 22.01.2015 charge was framed. Since then complainant and P.W have appeared on 04 dated of hearing. So, it cannot be said that complainant side is not willing proceed the case. I have gone through the case law cited by learned Counsel for applicant/accused, but facts and circumstances of the present case, as discussed above, are different and distinguishable.

6. In view of above facts, I see on no merit in the present bail application and same is accordingly dismissed. This order shall not affect further proceedings of the case.

7. I.G. Prisons shall ensure that the custody of applicant is produced on each and every date of hearing before the trial court and the trial court is directed to expedite the matter and conclude the same within a period of 4 months with compliance report to this court.

JUDGE

Tufail

