

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-382 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing.

21.06.2017.

Mr. Hussain Bux Chachar, Advocate for the applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

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Through instant bail application, applicant seeks post-arrest bail in Crime No.43/2009, registered at Police Station Pinyari Hyderabad, under sections 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and 394 PPC.

2. At the outset, learned counsel for applicant contends that applicant after obtaining protective bail was granted interim pre-arrest bail, but subsequently he remained absent due to unavoidable circumstances as he was under impression that case has been disposed of as co-accused were acquitted by the trial Court, hence he could not appear before the trial Court; however, on knowledge of NBWs issued by the trial Court against him, he appeared before this Court, sought protective bail and filed pre-arrest bail application before the trial Court but such pre-arrest bail application was declined and he was taken into custody. It is further contended that applicant's role is not transpired in F.I.R; applicant is innocent; he is behind the bars since three months; co-accused have been acquitted, hence he may be admitted to post-arrest.

3. In contra, learned APG raises no objection; however, he contends that applicant has failed to justify his absconsion.

4. Since, it is not disputed that co-accused have been acquitted which (acquittal) alone is sufficient *least* for making a case of further inquiry. Once case is falling within meaning of *further inquiry* the accused is entitled for bail not as grace but as *right*. It is settled principle of law if applicant / accused is entitled for bail on merits absconsion shall not be considered, as *per se*

absconson is no ground for denial of bail because it is also a well settled principle of law that whenever a question of propriety is confronted with a question of right the latter must prevail. Reference may be made to the case of *Ikram-ul-Haq v. Raja Naveed Sabir & Ors* 2012 SCMR 1273 wherein it is held as:

- '3. We have, however, remained unable to subscribe to this submission of the learned counsel for the petitioner because the law is by now settled that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as a matter of right and not by way of grace or concession. Bail is sometimes refused to an accused person on account of his absconson but such refusal of bail proceeds primarily upon a question of propriety . It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail. A reference in this respect may be made to the cases of *Ibrahim v. Hayat*

Further, the applicant is behind the bars and will face the legal consequences of such adjudication by the trial Court and is no more required for any purpose of investigation.

5. Accordingly, the applicant is admitted to post-arrest bail subject to furnishing two solvent sureties in the sum of Rs.50,000/- (Rupees fifty thousand) each and P.R. Bond in the like amount to the satisfaction of trial Court.

Bail application stands disposed of.

JUDGE

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