

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B. A. No.S-307 of 2016.

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of M.A-3098 of 2016.
3. For hearing.

17.10.2016.

Mr. Muhammad Akbar Mughal, Advocate for applicants.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

Mr. Khadim Hussain Soomro, Advocate for complainant.

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Through instant bail application, applicants seek post-arrest bail in Crime No.92/2014, registered at Police Station Daulatpur, under sections 302, 324, 337-A(ii), (F-ii), (L-ii), (H-ii), 147, 148, 149, 506(2) and 504 PPC.

2. At the outset, learned counsel for applicants, *inter alia*, contends that co-accused has been granted bail by this Court vide order dated 29.02.2016 and case of applicants is at par hence the applicants / accused are entitled for same treatment on principle of rule of consistency.

3. In contra, learned counsel for the complainant contends that earlier applicants filed bail application before this Court but the same was withdrawn and they approached trial Court by filing fresh bail application which bail plea, *however*, was turned down by the trial Court hence again they have approached this Court on rule of consistency, albeit that ground was available to them at the time when they withdrew their bail application. He has relied upon the cases reported as Muhammad Aslam v. The State and others (PLD 2015 SC 41), Ghulam Qambar Shah v. Mukhtiar Hussain and others (PLD 2015 SC 66), Mst.

Jewan Mai v. The State and others (PLD 2015 242) and Nazir Ahmed and others v. The State and others (PLD 2014 SC 241). Further it is disclosed that the person who lost his life received injuries by accused Namaz Deen, is in custody.

4. The Assistant Prosecutor General, on his turn, stood with arguments, advanced by the counsel for the complainant.

5. I have heard the respective parties and have also perused the available record.

6. Without any prejudice to the well established principle of law that:

*“if earlier application is dismissed as withdrawn, the second application can only be filed on any **fresh ground** and not on the same grounds which were available at the time of the disposal of the earlier application’*

I would say that term *fresh ground* would mean what was not available at the time of filing of the bail plea. There can be no denial to the well established principle that on accrual of *fresh ground* the bail plea can well be repeated before the trial Court *even* if it (*trial Court*) dismissed the earlier bail plea because the provision of Section 497(2) itself permits release of an accused *at any stage* of inquiry / trial subject to *prima facie* establishing of ‘**reasonable grounds to believe that accused is guilty of offence with which he is charged**’. Reliance can well be made to the case of Muhammad Mushtaq v. State 2007 P Cr.LJ 1542 wherein it is held as:

10..... Our own study reveals that no bar can be created for an accused to file repeated applications for release on bail, nor can an embargo be placed on

the powers of the Court to consider the application for bail at any time till the case remains before the trial Court. It is settled by now that **as soon as a fresh material is brought on the record of the Court, the accused can file fresh application.** Irrespective of the fact that **the bail has been declined by the trial Court or any Appellate Court in the first round of litigation** in respect of subject of controversy, therefore, the argument on behalf of the complainant is found devoid of any force and without statutory backing.

The *rule of consistency* is *indeed* a fresh ground subject to establishing that the case of accused is proved to have been standing on same footing. Thus, I would add that even when a bail plea is pending before this Court and a *fresh ground* accrues during period of *filing of bail plea* and *pendency thereof* the applicant / accused may raise such ground or may withdraw the bail plea to have *fresh ground* considered before trial court so as to keep his / her right to approach this Court *alive*. However, in case of withdrawal of bail plea, the applicant/accused shall only be entitled to raise *fresh ground* only and shall not be entitled to insist consideration of his case on other *merits* which shall be deemed to have been considered by this Court *even* while allowing withdrawal of bail plea. Accordingly, I am not inclined to accept the plea of the learned counsel for the complainant to dismiss the bail plea of the applicants/accused for reason that *fresh ground* , relating to rule of consistency, accrued to the applicants / accused, during pendency of earlier bail plea before this Court.

The allegations against the present applicants / accused are almost *identical* to that of the co-accused, granted bail; both were / are not alleged to have caused any injury to the deceased and injuries, if any, attributed to them were of *witnesses*; injuries alleged to have been caused by applicants even otherwise are punishable upto 02 years. Applicants are in jail since 02 years and trial is yet to be concluded

though, some witnesses have been examined. The case of the applicants / accused appear to be *prima facie* at par with that of co-accused, granted bail hence applicants / accused are also entitled for same treatment on count of *rule of consistency*.

3. Under these circumstances as well as keeping in view the case of Nazeer Ahmed (Supra), judicial propriety demands that bail be not denied to applicants particularly when it is settled principle of law that bail cannot be withheld as conviction in *advance*. Accordingly, applicants are admitted to post-arrest bail subject to their furnishing solvent surety 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 disposed of.

JUDGE

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