

## IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.1450 of 2016

Muhammad Asif

V/s.

The State

**Present: Mr. Justice Zulfiqar Ahmad Khan.**

Date of Hearing : 30.01.2017  
Applicant : Through Mr. Maroof Hussain Hashmi,  
Advocate  
State : Through Mr. Zahoor Shah, A.P.G

### **ORDER**

**ZULFIQAR AHMAD KHAN, J.**:- Through this bail application, Applicant/accused Muhammad Asif has prayed for grant of post arrest bail in crime No.214/2013 under sections 302, 324, 109/34 PPC, Police Station, Paposh Nagar, Karachi.

2. The facts in brief as stated in the F.I.R. are that the Applicant/accused alongwith Tanveer, Amir, Yasir, Parvaiz, Chanzeb, Khurram, Sagheer, Kashif Saleem, Haji Maroof and others were on alert await when one vehicle carrying Faizan, Hammad, Aizaz Taj and nephews, Adil Taj, Mehtab, Areeb, Danish Taj, Sajjad, Shahzeb, Munib and another Mohalla person namely Chatti traveling in Hi-roof and Motorcycle having reached closer to the accused persons. On the lalkara call of Haji Maroof, Messrs Tanveer, Amir and Yasir started firing with their pistols, which resulted in serious injuries of Messrs Mehtab, Areeb, Sajjad, Aizaz Taj, Munib and Adil. The accused persons however escaped from the scene. The injured were taken to Abbasi Shaheed Hospital, where Mehtab and Areeb were declared dead by the doctors and amongst the injured persons Aizaz Taj (9 year old) succumbed to the injuries and died later.

3. It is noted that while the Applicant/accused is named in the F.I.R. that he was present at the place of incident alongwith other co-accused who resorted to firing resulting in the death of the above named persons, however, no specific role has been assigned to him in the F.I.R. He has been named in the Charge Sheet, and the admitted fact is that he absconded for over a period of two years.

4. Also to note is that the Applicant/accused who was arrested on 20.02.2016, made his first bail application on 05.03.2016, which was refused by the Order dated 22.03.2016 against which, an application was made to this Court, which was also declined vide order dated 25.04.2016, whereafter the Applicant/accused made the second bail application before the aforesaid Sessions Judge, which met the same fate and now the instant second bail application is decided through this order.

5. I have heard learned counsel for the Applicant/accused, who overwhelmingly contented that while the Applicant/accused is named in the F.I.R., no specific role is assigned to him. It was further submitted that the investigation has been completed and Applicant/accused is no more required for investigation, therefore, confinement of the accused is unnecessary and the complainant, as well as, injured persons have not stated that the accused had played any role in the commission of offence in any manner except being present at the place of the incident. Coupled with the facts that nothing was recovered from his possession, thus accused is entitled to the concession of bail, counsel contended.

6. On the other hand, learned A.P.G. strongly opposed the grant of bail to the Applicant/accused on the ground that he had been a fugitive and nominated in F.I.R. with a specific role and P.W.s have also implicated the Applicant/accused in their statements under section 161 Cr.P.C. He further contended that the offence is heinous and falls within the ambit of prohibitory clause of Section 497 (1) Cr.P.C, therefore, the bail

ought to be declined. As to heinousness of the crime it was submitted that the incident costed three innocent lives, including that of a child who was only nine years.

7. Being posed with the query that where a person is named in an F.I.R. but having no specific role assigned to him in the F.I.R., how does it increase the merit of granting his bail application, the learned counsel for the Applicant/accused referred to 2016 MLD Sindh 886, 1999 SCMR 1320 and 2013 MLD 798, supporting his contentions that the mere presence at the crime scene with no specific role assigned in the F.I.R. generally results in the accused to be enlarged on bail. It was further posed that how the situation will change if the accused had blood-relationship amongst each other, and where the case of the prosecution was that it was only the “lalkara” of the father, when three brothers resorted to firing, which resulted in three deaths, and one who is a real brother of those busy murdering was present at the crime scene, then wouldn't this blood-relationship cements common intention? No support in this regard was provided by the learned counsel. However, study of the subject matter shows that these acts are termed as “blood feuds”, where Courts on numerous occasions have treated such feuds in a different way as compared to cases where complete strangers were present on the crime scenes and later nominated in F.I.Rs. In the case of Gul Razim v/s. The State (2013 YLR 1144) in similar circumstances, in presence of blood feuds between the parties, the motive and the common intention were held to be of “strong in nature” in particular when the case fell within prohibitory clause of Section 497 (1) Cr.P.C. Court reach to the conclusion that on tentative assessment of evidence, the Applicant/accused persons *prima-facie* were seen to be connected with the commission of offence and the bail petition was dismissed. In the similar circumstances, bail was also refused in the case reported as 2015 P.Cr.L.J. 1083.

8. As to the significance of Mens Rea in the criminal law in connection with blood feuds, the study of Harvard Legal Essays edited by Roscoe Pound (Cambridge, M.A Harvard University Press, 1934) is of relevance, which provides that “objective of criminal justice was primary to..... suppress the blood feud” and “intent was primary material insofar as it rendered the conduct more proactive”. In the case at hand, it is admitted that all accused persons are in blood relationship and seemingly had blood feud with the complainant party, therefore, the “lalkara” made by their father was not directed towards only three who at that juncture had access to arms and resorted to firing, the blood bond amongst all the accused present at the place of incident, without any shadow of doubt, makes their motive more stronger.

9. For the reasons discussed hereinabove, I do not find any merit or any fresh ground in the instant bail application, which is accordingly dismissed.

Judge