

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

Cr.Bail.Appl.No.S- 988 of 2015

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**DATE            ORDER WITH SIGNATURE OF JUDGE**

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28.10.2016.

Mr. Karamullah Memon, Advocate for applicant.  
 Mr. Hameedullah Dahri, Advocate for complainant.  
 Mr. Shahzado Saleem Nahiyoon, A.P.G. for the State.

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**SALAHUDDIN PANHWAR, J:**      Through instant application, applicant Jabbar seeks post arrest bail in Crime No.61/2013 u/s 302, 324, 114, 34 PPC registered at Police Station Perumal.

2.      Briefly stated facts in the FIR lodged by complainant Haji Gul Hassan are that he has eight sons, out of which Nizamuddin, aged about 25 years, was married with the daughter of Abdul Sattar Kundhani and he was serving in Sanghar Sugar Mill. In between 14/15-12-2013 night, complainant was available in his house, when his nephew Allahdad informed him through cell phone that today night, he, Nazeer, and Nizamuddin were available at Sugar Mill and at that time Ramzan called Nizamuddin to pay visit to him and then they all three jointly proceeded together and reached to pakka road Imdad Sirewal at 1130 hours and reached two furlongs away from the house of Abdul Sattar, where Jabbar and Ramzan, both sons of Abdul Sattar Kundhani met with them and they told to Nizamuddin as to why he is not bringing their sister, as such, he told them that few days he got met her with them, as such they talked harsh words to each other. Accused Jabbar instigated Ramzan to kill him and accused Ramzan took out pistol

from fold of his trouser and fired upon him. Nizamuddin after receiving firearm injury, fell down and then accused went away. They saw that fire was hit from the back of chest and crossed from chest, the blood was oozed and he was died. Complainant left Naseer at the dead body of Nizamuddin and he came at home and after getting phone, he called and informed to the police and also disclosed to the complainant that accused persons also caused injuries to their sister Shahnaz. After hearing such news complainant, his son Mehmood and relatives, they proceeded, meanwhile, Allahdad again called him and disclosed him that police after usual formalities sent dead body at hospital. Thereafter, they came at Kandhari hospital, where Naseer disclosed the above facts. After autopsy, dead body was delivered to them and after funeral and condolence, complainant got registered the FIR.

3. Learned counsel for applicant *inter alia* contends that the applicant is innocent and has been falsely implicated in the case; that no specific role has been assigned to the applicant; occurrence took place on 14.12.2013 while FIR was lodged on 16.12.2013 which creates doubt in the veracity of complainant and it appears that occurrence is totally un-witnessed and the story has been cooked up and the applicant has been falsely involved in this case; that only role of instigation has been ascribed to the applicant otherwise active role of causing firearm injuries has been attributed to co-accused Ramzan, who allegedly fired with his pistol on Nizamuddin. In support of his contentions, learned counsel has placed reliance on the cases reported as Sher Alam Khan alias Vakil Khan v. The State and another (2011 MLD 349), Allah Ditta v. The State and another (2014 P.Cr.L.J. 658), Godal v. The State (2010 P.Cr.L.J. 280), Ghanwar Bhutto v. The State (2011 MLD 210), Abdur

Razzaq v. The State (2000 P.Cr.L.J. 1868), Hakim Ali and another v. The State (2009 YLR 98) and Maulana Abdul Aziz v. The State (2009 SCMR 1210).

4. On the other hand, learned A.P.G. contended that applicant is nominated in the FIR; both the parties were already known to each other hence there was no possibility of substitution of the applicant and the eye witnesses of the incident were present; that prosecution may be allowed to lead evidence and if any cogent ground divulge, the applicant may repeat bail application. He lastly contended that at this stage applicant is not deserving for the concession of bail.

5. Learned counsel for the complainant adopted the arguments advanced by learned A.P.G. and further added that applicant had instigated the co-accused Ramzan; the question of common intention is involved and the applicant is equally responsible for the commission of murder of Nizamuddin; co-accused Ramzan had fired at Nizamuddin at the instigation of present applicant. In support of his contentions, learned counsel placed reliance on the cases reported as Muhammad Arshad v. The State (2006 SCMR 966), Mehboob Ali Shah v. The State (2014 MLD 1471) and Muhammad Rafique and 4 others v. The State through Advocate General (2008 P.Cr.L.J 351).

6. I have considered the submissions advanced at bar and have noticed that on 14.12.2013 incident had taken place while FIR was registered on 16.12.2013 but simply the delay in the registration of FIR is not a good ground for grant of bail if material available with the prosecution indicates *otherwise*. Perusal of FIR further indicates that the present applicant, in company of co-accused Ramzan, had intercepted the deceased in the way; both the accused persons are brothers *inter se* and present applicant / accused is not alleged to have been *present* at the spot but

it is specifically alleged that it was the applicant / accused on whose *instigation* the co-accused caused death of deceased by making straight fire with weapon. Matrimonial dispute also shows strong evidence of instigation, therefore, the active participation of the present applicant / accused is *prima facie* there. However, going into much details may prejudice the merits of the case hence question of common object / intention is *better* to be left for trial Court to decide. The parties are *known* to each other and eye-witnesses have categorically alleged a *specific role* of instigation against the applicant / accused hence, *prima facie*, it is not a case of mistaken identity nor such plea is raised by the applicant / accused *even* therefore, available material *prima facie* links the applicant / accused with the offence with which he is charged. Further, the present applicant / accused has not been able to produce any thing on record which could justify his plea of *false* implication while exercising the *limited* scope i.e tentative assessment at bail stage. The facts and circumstances of the case would conveniently invite the application of provisions of law entailing punishment falling within the prohibitory part of section 497 Cr.P.C. So far as the question of assigning specific role to the applicant is concerned, suffice it to say that merely for such reason accused would not be entitled for grant of bail because mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under section 497(2) Cr.P.C. Reliance can be placed on the case *Muhammad Abbasi v. State* 2011 SCMR 1606 wherein it is held that:

10. ... It is well settled that mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection (2) of section 497 Cr.P.C and it is not possible to release the accused notwithstanding the fact that he is involved in heinous criminal case, particularly, in the case where the eye-witnesses have duly implicated him with the commission of offence. Reference in this behalf may be made to the cases of *Asmatullah*

Khan v. Bazi Khan (PLD 1988 SC 621), Mst. Parveen Akhtar v. The State (2002 SCMR 1886), The State through D.G ANF v. Abdul Ghani 2010 SCMR 61)

I would add that to bring a case within meaning of subsection (2) of section 497 Cr.PC the applicant / accused must *prima facie* establish that collected material of the prosecution even if taken as true yet leaves for reasonable grounds for a *prudent* mind to believe that applicant / accused is not guilty of the offence. A mere plea of further inquiry or that of *enmity* , in absence of *substantive* material, would not bring the case falling within meaning of Section 497(1) into section 497(2) of the Code because the proviso of section 497(1), aimed to offences of prohibitory clause, insists decline of bail while saying :

‘...., **but he shall not be so released** if there appears reasonable grounds for believing that he has been guilty of an **offence punishable with death** or (imprisonment for life or imprisonment for ten years)

Besides, the charge against applicant has been framed and now the case is fixed for evidence of prosecution witnesses; defence counsel has withdrawn vakalatnama in trial Court and not proceeding with the matter; injured sister also deposed against brother which advances the case of prosecution against the applicant / accused. Normally when trial is at the verge of conclusion, bail after arrest shall not be granted particularly where the applicant / accused has failed to bring his case within meaning and objective of section 497(2) Cr.PC.

7. In these circumstances, the case law relied upon by the leaned counsel for the applicant is not helpful to him. The bail application merits no consideration and the same is hereby dismissed.

8. Observations made hereinabove are tentative in nature and shall not influence the trial Court at the time of proceeding with the case.

JUDGE

Tufail