

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

Cr. B.A. No. S- 355 of 2016

DATED	ORDER WITH SIGNATURE OF JUDGE
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30.01.2018

Mr. Jawaid Chaudhary, advocate for applicant in Cr. B.A. No. S- 227 of 2016.

Mrs. Razia Ali Zaman, advocate for applicant in Cr. B.A. No. S- 117 of 2016.

Mr. Tahseen Ahmed H. Qureshi, advocate for applicant in Cr. B.A. No. S- 355 of 2016 is called absent

Mr. Shaukat Ali Rahimoon, advocate for complainant

Mr. Shahid Ahmed Shaikh, DPG

OMAR SIAL, J.- Through **Criminal Bail Appl. No. S-355 & 227 of 2016**, Applicants Muhammad Sajid @ Aatish and Muhammad Imran have sought post-arrest bail in Crime No. 41 of 2014 registered under Section 302, 114, 324 & 34 P.P.C. at the Mehmoodabad police station district Mirpurkhas. Earlier their post-arrest bail application was turned down by the learned IInd Additional Sessions Judge, Mirpurkhas on 7.3.2016.

2. Through **Criminal Bail Appl. No. S- 117 of 2016**, the Applicant Muhammad Siddique has sought pre-arrest bail in Crime No. 41 of 2014 registered under Section 302, 114, 324 & 34 P.P.C. at the Mehmoodabad police station district Mirpurkhas. Earlier his pre-arrest bail application was turned down by the learned IInd Additional Sessions Judge, Mirpurkhas on 19.12.2014.

3. Since all the three bail applications arise out of same F.I.Rs hence, I intend to dispose of all of them by this common order.

4. The F.I.R. in this case was registered by Azhar Ali s/o Dost Mohammad Unar on 30-8-2014. Azhar Ali recorded that his brother Athar Ali had told him a few days ago that Applicants Imran Panhwar and Sajid @ Aatish tease him. On 27-8-2014, while the complainant along with his brother Athar Ali was at home of his uncle Zahoor someone called out for his brother Athar Ali. Athar Ali went out. Soon the complainant and others heard screams coming from outside. When

he went out to see what was happening, he saw the Applicants armed with pistols, Siddique was holding Athar by his arms and Sajid was repeatedly hitting Athar on the head with the butt of his pistol. Imran was instigating him. Upon the complainant party intervening in the fight, Imran and Sajid fired at them but the bullets missed the complainant. The assailants then rode away on the motorcycle they had come on. Athar Ali subsequently died due to the blows he received on his head.

5. I have heard the learned counsel for the Applicants as well as the learned counsel for the complainant and the learned DPG. Perused the record with the counsels able assistance. My observations are as follows.

- I. Applicant Sajid @ Aatish has been nominated specifically with the role of repeatedly hitting Athar with the butt of his pistol. The post mortem report shows serious injuries and fracture of the skull and the brain membrane torn and ruptured. The learned counsel for the Applicant has argued that the post mortem report shows that Athar died of a firearm injury. With much respect to the learned counsel, the portion of the post mortem report that states that Athar died of a firearm injury is based on what the doctor was told by the police when the body was brought in. Prima facie the medical report supports the ocular version. Hence, the learned counsel's reliance on *Syed Abdul Baqi Shah v. The State* (1997 SCMR 32), *Syed Khalid Hussain Shah v. The State* (2014 SCMR 12) is not of much help as the Hon'ble Supreme Court had determined in this case that the ocular evidence was in conflict with the medical evidence. However, it is only after evidence is led in trial that this issue will be conclusively decided.
- II. The learned counsel for Sajid @ Aatish has also argued that the incident is said to have occurred on 27-8-2014 but the F.I.R. was lodged on 30-8-2014 hence it makes the involvement of the Applicant Sajid @ Aatish doubtful. The delay of 3 days in lodging the F.I.R. will not ipso facto entitle Sajid @ Aatish for bail. The learned counsel has relied on a judgment of a learned single judge of this Court in *Babar Gul v. The State* (2015 P.Cr.L.J.). With much respect to the learned counsel, the delay in that case was of 18 days but that was not the only factor which led to the grant of bail. The learned judge observed in that case that the incident was unwitnessed, no prosecution witness had deposed against the applicant (in that case), no evidence was on record to link the crime with the applicant. All these factors combined had led the learned judge to reach the conclusion he did. Suffice to say this is not the situation in the current case where not only has Sajid @ Aatish been implicated with an overt role

but that there are several eye witnesses who have deposed against him. The trial court will be in a better position to decide the issue of delay after evidence is led and the prosecution given an opportunity to explain its position.

- III. The learned counsel for Sajid @ Aatish has then attempted to make out a case for bail by referring to the testimony of some of the prosecution witnesses which has been recorded till date. Here, I would like to record that the trial is in its final stages but the learned counsel for Sajid @ Aatish has aggressively claimed that the liberty of his client is at stake and that the bail application be heard even at this late stage. In support of his argument he has relied on a judgment of the Hon'ble Supreme Court in *Maria Khan v. The State* (2013 SCMR 49). I have intentionally restrained myself from making any observations on his arguments lest the case of his client is prejudiced in any manner. Suffice to say that what the learned counsel has argued would amount to a deeper appreciation of evidence and cannot be said to furnish a clear and categorical ground for the grant of bail. The trial court is best placed to draw conclusions from the evidence recorded in trial.
- IV. The learned counsel for Sajid @ Aatish has next argued that the section 161 statements of the prosecution witnesses were recorded 3 days after the incident. In support of his argument he has relied on a judgment of a learned single judge of this Court in *Liaquat v. The State* (2014 YLR 2148) and in *Rahat Ali v. The State* (2010 SCMR 584). Here I would like to record that while the learned counsel has not relied upon it, I am cognisant of the decision of the Hon'ble Supreme Court in *Muhammad Asif v. The State* (2017 SCMR 486) where the Hon'ble Court has held that a unexplained delay in recording the witness statements would have an adverse impact on the prosecution case. In both the Supreme Court cases, the Court has held that an "unexplained delay" would have an adverse impact. The prosecution has to be given an opportunity of explaining the delay in trial which can only be done after evidence is led. The delay, if any, in recording the section 161 statements can thus not be a ground for the grant of bail in the circumstances of the present case.
- V. Applicants Mohammad Siddique has been assigned the role of grappling with the deceased whereas Applicant Imran Bux is assigned the role of instigation and an ineffective fire. Whether these two Applicants shared a common intention with primary accused Sajid @ Aatish will have to be determined after evidence is led in trial. Accordingly, the case of these

two Applicants falls within the ambit of section 497(2) Cr.P.C. and thus one of further enquiry.

VI. In view of the above, it is concluded as follows:

- (i) The post arrest bail application of Applicant Sajid @ Aatish is dismissed.
- (ii) Applicant Muhammad Imran is admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs. 300,000 and a P.R. Bond in the like amount.
- (iii) The interim pre-arrest bail granted to Applicant Muhammad Siddique on 19.02.2016 is confirmed on the same terms and conditions.

6. Above are the reasons for my short order of 30-1-2018.

JUDGE