

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

Cr. B.A. No. S- 371 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
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06.02.2018

For hearing

Mr. Hidayatullah Abbasi, advocate for applicant.
Mr. Safdar Ali Charan, advocate for complainant
Mr. Shahid Ahmed Shaikh, DPG

OMAR SIAL, J.- Applicant Zulfiqar alias Daboo has sought post-arrest bail in Crime No. 112 of 2016 registered at Sehwan police station, Dadu under Section 302, 324, 148, 149 PPC r/w Section 6/7 ATA. Earlier, his bail application was turned down by the learned Additional Sessions Judge-I, Kotri on 4.5.2017.

2. The FIR in this case was lodged by P.C. Mukhtiar Ali on 9.8.2015 who was posted as a constable at the Sehwan police station. He recorded that on 8.8.2016 he along with A.S.I. Niaz Hussain Panhwar, duly armed with weapons, departed from the police station on a motorcycle for patrol duty. At about 2:00 a.m. when they had reached close to the Ali Rest House, they saw a white coloured Prado vehicle driving towards them. Finding the vehicle suspicious, the two policemen signalled it to stop. The vehicle stopped and five persons alighted from it. The policemen identified two of them as Ghulam Hussain and Atta Muhammad (both armed with pistols) while their three accomplices (all armed with Kalashnikovs) remained unidentified. Accused Ghulam Hussain Rind discharged his weapon at A.S.I. Niaz Hussain Panhwar. All the accused then pushed the complainant down and fired upon him as well but the complainant miraculously escaped their bullets. The accused then left the scene. A.S.I. Niaz Hussain subsequently succumbed to his injuries.

3. I have heard the learned counsel for the Applicant, learned counsel for the complainant as well as the learned D.P.G and scanned the record with their able assistance. My observations are as follows.

- i. It appears that the Applicant is one of the three unidentified person who had alighted from the Prado. No overt role in killing A.S.I. Niaz Hussain Panhwar is assigned to him. He is said to be present

on the scene and together with all the other accused fired at the complainant, however, it is an admitted position that the complainant was unscratched. Whether or not the Applicant was present on the scene and whether or not he shared a common intention with the accused who is said to have fired at the deceased will have to be determined after trial. At this preliminary stage it appears odd that 5 persons would discharge their weapons on the complainant from a relatively short distance but he would be able to dodge them.

- ii. It is the prosecution case that the Applicant was arrested on 13-8-2016 but the identification parade was not held till 16-8-2016. No description of any of the unidentified persons who were said to have committed the crime was given in the F.I.R. It appears that after arrest, the Applicant was kept in the lock up of the same police station at which the complainant (who identified the Applicant in the identification parade) was posted. I have intentionally restrained myself from making detailed observations so as to not prejudice the case of either party. Suffice to say that the veracity and evidentiary value of the identification parade held will have to be determined after evidence is led in trial.
- iii. It appears that on 9-8-2016 the deceased (who was in an injured condition at that time) recorded a dying statement in which he has quite categorically stated that it was co-accused Ghulan Hussain Rind who had fired at him. While he vaguely mentions that there were 4 other persons present on the spot, the Applicant is neither identified by name or description. I am cognisant of the fact that one cannot expect a dieing man to narrate precise details, yet, his vague statement regarding the accomplices of the person said to have fired upon him, in my opinion, cannot be made the basis to deny the Applicant bail. The doctor who prima facie was present when the deceased recorded his statement has also confirmed that the deceased said that it was co-accused Ghulam Hussain Rind who had fired at him.
- iv. Investigation is complete. The final report u/s 173 Cr.P.C. is filed in court. The Applicant is no longer required for evidence. There is no danger of the Applicant tampering with the evidence. The case of the Applicant appears to fall within the ambit of section 497(2) Cr.P.C. and thus one of further enquiry.

4. For the above reasons, the Applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 300,000 (Rupees Three hundred thousand) and a P.R. bond in the like amount, to the satisfaction of the trial court.

JUDGE