

Order sheet
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Cr. B.A. No. S- 999 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
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1.2.2018

For hearing

Mr. Mian Muhammad Keerio, advocate for applicant
Syed Babar Ali Kazmi, advocate for complainant
Mr. Shahzado Saleem Nahiyoon, D.P.G.

OMAR SIAL, J.- Applicant Muhammad Qasim @ Qasim has sought post-arrest bail in Crime No. 22 of 2017 registered under Section 302, 114, 147, 148 and 149 P.P.C., at the Diplo police station in district Tharparkar. Earlier, his post-arrest bail application was turned down by the learned Sessions Judge, Tharparkar at Mithi on 25.10.2017.

2. The F.I.R. in the case was registered by complainant Tayab on 29.6.2017. He reported that his nephew Sikander Ali was residing with him and there was a clash going on between them and accused Dodo Nohri and others over the cutting of trees and using the wood to make coal in their (Dodo's) kiln. On the day of incident while he along with his nephew Sikandar Ali was going towards the kiln of Dodo Nohri to complain about the cutting of trees, at about 9:30 a.m. accused Dodo and Khaliq Dino (holding hatchets), Mir Muhammad (armed with a gun), Rab Dino, Qasim (Applicant) and Faqeer Muhammad (both holding cudgels) and Raziq Dino (armed with a pistol) appeared. All the accused persons on the instigation of Dodo collectively attacked Sikandar Ali. Accused Mir Muhammad fired at Sikandar Ali resulting in Sikander's death.

3. I have heard the learned counsel for the Applicant, complainant as well as the learned DPG. My observations are as follows:-

- i. It is only accused Mir Muhammad who has been assigned the role of firing at the deceased. A general allegation of jointly attacking the complainant and Sikander is attributed to the other accused, which also includes the Applicant.
- ii. The Applicant is said to be on the scene holding a cudgel and attacking the deceased with it. The post mortem report number 471/475 dated 1-7-2017 pertaining to the deceased however shows that the deceased died due to a gunshot. There are no other marks

of injury on his body apparently that were caused by hard and blunt substances.

iii. Whether the Applicant shared a common intention with Mir Muhammad (who is said to be the only person to have fired upon the deceased) making him vicariously liable for the act of Mir Muhammad, in the circumstances of the case, will have to be proved after evidence is recorded in trial. The case of the Applicant appears to fall within the ambit of section 497 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 solvent surety in the sum of Rs.100,000/- (One hundred thousand only) and a P.R. Bond in the like amount to the satisfaction of trial court.

JUDGE