

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

Cr. B.A. No. S- 981 of 2017

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<b>DATED</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1.2.2018

For hearing

Mr. Abdul Aziz Memon, advocate for applicant

Mr. Shahzado Saleem Nahiyoon, D.P.G.

**OMAR SIAL, J.-** Applicant Habibullah has sought pre-arrest bail in Crime No. 39 of 2017 registered under Section 302, 504, 114, 337-F(iii), 337-F(iv) PPC at Diplo police station district Tharparkar. Earlier his pre-arrest bail application was turned down by the learned Sessions Judge, Tharparkar at Mithi on 1.11.2017.

2. The F.I.R. in the case was registered by complainant Dodo on 7.10.2017. He reported that he has strained relation with his brother Habibullah (applicant) over certain matrimonial issues. On 3.10.2017 as he was returning home from grazing his goats, his brother Habibullah (armed with pistol) along with other co-accused who were duly armed with deadly weapons waylaid him. Habibullah fired directly at the complainant which fires hit him on his abdomen and index finger. On the complainant's hue and cry, some villagers appeared and the accused persons went away.

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

- i. This is a dispute between two brothers over some marriage issue. The two witnesses cited by the complainant as eye witnesses by their own account arrived on the scene after the incident and it appears from their section 161 Cr.P.C. statements that they have not actually witnessed the incident.
- ii. One Majeed said to be the father of both the complainant and the Applicant and one Allahdino, another brother of the complainant and the accused have sworn affidavits that such an incident has never occurred between the brothers. Ulterior motive on the part of the complainant can thus not be conclusively ruled out at this stage.

iii. The injuries allegedly inflicted upon the complainant appear to fall within the definition of jurh ghair jaifah mutalahimah and hashimah which carry a potential sentence of three (3) and five (5) years thus fall within the non-prohibitory clause of section 497 Cr.P.C.

4. For the above reasons, the interim pre-arrest bail already granted to applicant on 10.11.2017 is confirmed on the same terms and conditions.

JUDGE

karar\_memon/PS\*

