

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

Criminal Bail Application No.S-275 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For hearing

20.04.2018.

Mr. Zahid Ali Khoso, advocate for applicant.

Mr. Nisar Ahmed Chandio, Advocate for complainant alongwith complainant.

Mr. Shahid Ahmed Shaikh, D.P.G. alongwith Ms. Sobhia Bhatti, A.P.G.

SHAMSUDDIN ABBASI, J: Applicant/accused Manzoor Cholyani seeks post arrest bail in case under F.I.R. No.293/2010 registered under Section 302, 324, 365, 395, 147, 148, 149, PPC at Jamshoro.

2. The facts of the prosecution case are that the complainant Ghulam Murtaza has lodged the F.I.R. on 10.12.2010 at 1500 hours with police station Jamshoro, stating therein that there is matrimonial dispute between the complainant and his caste fellows namely Ali Raza Cholyani and others. Ali Raza Cholyani and others have already registered false cases against the complainant party. The complainant party asked them for faisla but they refused. On 09.12.2010 after taking night meal, the complainant party went to sleep. On 10.12.2010 at about 2:30 a.m (night) the complainant noticed the noise of some persons entered in the house. They waked up and saw on the light of bulbs and identified every one Ali Raza s/o Imdad Hussain, Shafqat alias Badlo s/o Allah Jurio, Mola Bux s/o Budho, Bashir Ahmed s/o Shamo Khan all armed with kilakshinkove, Khair Muhammad s/o Andal, Lal Bux s/o not known, Bachayo khan s/o Ali Muhammad, Manzoor s/o Juryo all armed with kilakshinkove and pistols all by caste Cholyani Chandia, residents of

Warah and five unknown persons armed with Kilakshinkove and pistols along with them, police personnel namely DSP Wahid Bux Juryo, DSP Shahdadkot and SIP Imdad, ASI Shahid Hussain of PS Nasirabad, ASI Noor Mugheri of PS Warah, ASI Khadim Hussain of PS Meero Khan, S.H.O Akbar Khokhar, S.H.O Meer Toot Abbasi and S.H.O Anwar Abro PS Nasirabad, ASI Manzoor Mastoi of PS Warah, S.H.O Mulazim Abbasi, PC Banho of PS Warah, PC Ali Gohar Ganghro of District Shahdad Kot and other police personnel, they all pointed their weapons at the complainant party and hostage them. They searched the house. Three tola of gold ornaments with cash Rs.60000/- were taken by ASi Shahid Hussain Memon, DSP Wahid Bux took one SBBL gun of Shahid Hussain Memon, DSP Wahid Bux took one SBBL gun of 16 bore, ASI Imdad took five fire rifle, ASI Noor Mugheri conducted personal search of complainant party and snatched mobile set of nokia. Thereafter, accused Ali Raza made straight fire with intention to commit murder at the brother of complainant namely Muneer Ahmed, which hit him on his head, accused Shafqat alias Badlo made straight fire with intention to commit murder at Irshad Ali, the cousin of complainant, which hit him in his head, accused Mola Bux made straight fire upon Muhabat Ali, the maternal uncle of complainant with intention to commit his murder, which hit him in his chest, accused Bashir made straight fire with intention to commit murder at Mashooque Ali, the maternal uncle of complainant which hit him and became serious injured, whereas Muneer Ahmed, the brother of complainant, Irshad, the cousin of complainant and Muhabat Ali, the maternal uncle of complainant due to receiving of fire shorts expired away on the spot. The accused Khair Muhammad, Lal Bux, Bachayo Khan, Manzoor and unknown persons had also made fires, which hit at the different places of the house. S.H.O Khadim Hussain, S.H.O Akbar Khokhar, S.H.O Meer Muhammad Abbasi, S.H.O Anwar Abro, ASI Manzoor Mastoi, S.H.O Mulazim Abbas, PC Banho Khan, PC Ali Gohar Ganghro and other police personnel also made fires. Seven

police mobiles were parked outside of the house with Parado Vehicle of DPO, two cars and two vans in which the accused persons then boarded and went away. The complainant then informed such information to his relatives and took the injured and dead bodies of deceased persons went to LUMHS Jamshoro, where the police gave the letter for medical treatment and after conducting postmortem of deceased, the complainant went to his house, where he came to know that Arz Muhammad s/o Ali Muhammad had been kidnapped away by above named accused and police personnel, thereafter, the complainant went to Police Station, where he lodged the F.I.R. After usual investigation, the police submitted challan against accused showing them as absconders.

3. The applicant filed bail application before Additional Sessions Judge, Kotri, which was dismissed vide order dated 22.03.2018. Hence, the applicant has filed this bail application.

4. Learned counsel for the applicant/accused submits that as per role applicant/accused was merely shown to be present at the scene of offence. He further contended that the matter was reinvestigated by police in which applicant/accused was found innocent and such report was also placed on record of the trial court. He further contended that the learned trial court has acquitted the nominated accused in this case on the basis of evidence recorded by learned trial court in which prosecution witnesses have not supported the case of prosecution. He further contended that the complainant and injured / star witness of this case Mashooque Ali have filed affidavit before this Court in which they have exonerated the present applicant from the commission of offence and clearly stated that the applicant/accused alongwith other accused were not present at place of incident. He has placed case law reported in PLD 1989 Karachi 281, JAGAN and others vs. THE STATE, case of MUHAMMAD NAWAZ alias NAJJA reported in 1991 SCMR

111, and the case of Mitho Pitafi vs. THE STATE reported in 2009 SCMR 448. He prayed for grant of bail.

5. Learned D.P.G has half heartedly raised objection for grant of bail to the applicant/accused.

6. Learned Counsel for complainant alongwith complainant present in Court. Complainant admitted the contents of affidavit sworn by him before this court and exonerated the applicant from the commission of offence and raised no objection for grant of bail.

7. Heard learned Counsel for applicant/accused, learned Counsel for complainant as well as D.P.G and perused the record.

8. As per facts of the case applicant/accused was shown to be present at the place of offence and no specific role has been assigned to him. I have also gone through the report of reinvestigation of this case placed on record as Annexure- C at Page- 27, which reveals that applicant / accused was declared innocent. I have also gone through the judgment passed by the learned trial court which shows that 12 nominated accused have been acquitted by the learned trial court vide judgment dated 04.02.2012 on the basis of evidence recorded by the learned trial court in which all the prosecution witnesses have not supported the case of prosecution. I have also perused the affidavit filed by complainant as well as star witness of this incident injured Mashooque, which reveals that they have exonerated the present applicant / accused from the commission of offence and did not implicate him in this offence and further they raised no objection for grant of bail. I have also gone through the statement of injured witness Mashooque Ali recorded by learned Judicial Magistrate Kotri under section 164, Cr.P.C, which is available as Annexure-F at Page 83, which reveals that injured exonerated the applicant/accused from the commission of offence.

9. In view of affidavit filed by the complainant as well as injured Mashooque Ali, the case of present applicant comes within the terms of further inquiry u/s 497(2), Cr.P.C. He is entitled to get concession of bail, therefore, I admit him on bail in Crime No.293/2010 registered at P.S Jamshoro in the sum of Rs.2,00,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court.

Accordingly, bail application is allowed.

JUDGE

Ali Haider