

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

Criminal Bail Application No.S-276 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.

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.313 /2011 registered under Section 302, 337, 34 PPC at Jamshoro.

2. The facts of the prosecution case are that on 14.12.2011 at about 1500 hours complainant Ameer Ali son of Umeed Ali Chandio R/o Jamshoro got registered above FIR. He alleged in the FIR that on dated 14.12.2011, I and my relatives each Akhtiar Ali son of Ali Muhammad chandio R/O Bhariya Vilalge, Jamshoro Aged about 25 years and Ghulam Murtaza son of Datto Khan Chandio and Faqeer Abdul Raheem son of Baharam Khan Chandio all resident Bhariya Village Jamshoro, we all together went towards Jamshoro city by crossing Cattle form adjacent Mataro Shah Imam Bargah near Indus highway, we have bloody dispute with Ali Raza Cholyani Chandio and others. They already killed our three persons including Muhabbat Ali Chandio and others, Ali Raza Chandio threatened us to withdraw from all cases, on day of incident at about 1:30 we reached near cattle farm near Indus highway we saw two vehicles were standing one was GLI light green and one XLI car from that eight persons alighted out of them we identified six persons everyone 1 Ali Raza S/o Imdad, 2 Fazlo s/o Allah Jurio having K.K. 3. Sartaj s/o Panjo Khan having KK 4. Habban s/o Ali Muhammad 5. Imran S/o Panjo 6.

Asadullah s/o Panjo and two unidentified persons if seen again can identify, they told us that as you have not withdrawn the case now we will kill you, meanwhile we saw all accused persons started firing from their weapons with intention to kill my Cousin Akhtiar Ali, they made straight fires which hit on his chest, abdomen and other parts of body and he fell down, we remain silent due to fear all accused persons went away by making aerial firing and threatening. Thereafter, F.I.R. of the incident lodged by police and 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 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 Ameer Ali, P.W Ghulam Murtaza and P.W Abdul Rahim 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 and neither he has committed any offence nor they recognized him as offender of the offence and raised no objection for grant of bail. 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 has also raised no objection for grant of bail to the applicant/accused.

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

8. It is an admitted fact that as per F.I.R. applicant/accused was shown present at the place of offence alongwith co-accused. I have perused the report of further investigation available at Page-19, in which the applicant/accused was found innocent and such report has been produced by police before the learned trial court. I have also perused the affidavit submitted by complainant as well as eye-witnesses of the incident Ameer Ali, Ghulam Murtaza, Abdul Raheem which reveal that they have exonerated the applicant / accused from the commission of offence and raised no objection for grant of bail.

9. In view of affidavit filed by the complainant party, I am of the view that the case of applicant/accused comes within the ambit of further inquiry as envisaged in terms of section 497(2), Cr.P.C, therefore, I admit him on bail in Crime No.313/2011 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