ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI,
Crl. B.A. No. 1527 of 2018.

DATE	**ORDER WITH SIGNATURE OF JUDGE**

For hearing of bail application.

01.02.2019

Mr. Muhammad Arif, advocate for applicant.
Mr. Siraj Ali Khan, Addl. P.G. Sindh.

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Applicant Kamran son of Muhammad Aslam seeks post-arrest bail in FIR No.293 of 2017 registered at Police Station Defence, Karachi, for offences punishable under Sections 397, 398, 324 & 34, PPC.

2. Precisely, the relevant facts as narrated in the FIR are that on 12.12.2017 at about 0335 hours applicant alongwith his companions trespassed into the house of complainant Muhammad Kamran Razi, through window of drawing room with intention to commit robbery; meanwhile the complainant and other inmates of the house awakened due to their voices, came out from their rooms and on seeing them the accused persons started firing with deadly weapons on complainant and his two brothers, who in retaliation fired in self defence with their licensed weapons, resultantly the accused persons remained unsuccessful in their aim and made their escape good through main gate of the house without committing robbery, however, due to their firing the complainant sustained pellet injuries on his face and subsequent thereto his friend, Dr. Abdul Razzak, brought him at Jinnah Hospital for treatment. The police came at hospital and recorded 154, Cr.P.C. statement of complainant and later on incorporated the same in FIR book.

3. After registration of case, the police arrested the applicant and after usual investigation submitted challan before the Court of competent jurisdiction under Sections 397, 398, 324 & 34, PPC.

4. Learned counsel for the applicant/accused, *inter alia*, contends that the applicant is innocent and has been falsely implicated in this case by the complainant in collusion with police with malafide intention and ulterior motives; that the allegations are general in nature and no specific role is attributed to any of the accused and the FIR has been lodged against unknown persons; that the entire story is false, fabricated and unbelievable as none from the side of accused sustained any injury in the counter firing, therefore, the case of the applicant requires further inquiry; that nothing incriminating has been recovered from the possession of applicant; that there is clear malafide on the part of police who have involved the applicant in so many other cases in which either he has been acquitted or granted bail by the Courts of competent jurisdiction; that the applicant is not a previous convict; that the challan has been submitted and the applicant/accused is no more required for further investigation. In support of his submissions, learned counsel for applicant has relied upon the cases reported as 1997 SCMR 412, 1999 P.Cr.L.J 271. SBLR 2011 Sindh 1205, 2017 SCMR 279, and 2018 MLD 745.

5. In contra, the learned Addl. P.G. has opposed the bail plea on the ground that the offence against the applicant is heinous one and falls within the prohibitory clause of section 497, Cr.P.C.; that the complainant has correctly picked the applicant in identification parade held before a Magistrate and also implicated him with the commission of crime in his evidence recorded before the learned trial Court by deposing full account of the incident; that the applicant is a habitual offender and involved in so

many other cases as per police report; that the trial Court has rightly rejected the bail plea of applicant and the counsel for applicant has failed to point out any enmity against the complainant for false implication of applicant, hence he does not deserve concession of bail. In support of his submissions, the learned Addl. P.G. has relied upon the case reported as 2002 SCMR 442.

6. Heard arguments and perused the record.

7. It is now well-settled law that at the bail stage only a bird eye-view of evidence is taken into consideration while deeper appreciation of evidence is not permissible, therefore, accused is required to establish a case of ***further inquiry***. Of course, if it appears to the Court at any stage of trial that there are no reasonable grounds for believing that the accused had committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail. While exercising such discretion, the Courts must always satisfy its conscious between existence or non-existence of **'reasonable grounds'** to believe link or otherwise of accused with offence, particularly when offence is falling within prohibitory clause. In every criminal case some scope for further inquiry into the guilt of accused exists, but on that consideration alone it cannot be claimed by the accused as a matter of right that he is entitled to bail. For bringing the case in the ambit of further inquiry, there must be some *prima facie* evidence, which on the tentative assessment, are sufficient to create doubt with respect to involvement of accused in the crime. In Iqbal Hussain v. Abdul Sattar & another (PLD 1990 SC 758) while setting aside the bail granting order of the High Court, the court referred to the tendency in courts to misconstrue the concept of further enquiry and held as follows—

> *'It may straightway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C which, with*

> *respect, has not been correctly understood by the learned Judge in the High Court nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element, as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the police or by the court in respect of the merits of the case. The learned Judge in this case avoided rendering such prima facie opinion on merits as it is mentioned in subsection (2) of section 497 Cr.P.C, and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C, the respondent was not entitled to bail thereunder as of right.*

Each case has its own foundation of facts, therefore, it is not possible to put each and every case in the cradle of further inquiry to provide relief to accused by releasing on bail merely by repeating words of ***further inquiry*** or raising ***presumptions*** and ***surmises*** but such consideration must remain confined to ***tentative assessment*** of available material only.

8. Record reflects that the applicant was arrested in another crime and during interrogation confessed the commission of present crime and also voluntarily led the police to the house of complainant and pointed out the place of incident. It is by now settled that mere non-appearing name of the accused in the FIR is never sufficient to grant him bail because, as already observed, bail is to be granted or declined on totality of all material came to surface during ***investigation*** and not solely on FIR which, *otherwise,* is meant to bring the law into motion**.**

9. It is also to be noted that the complainant identified the applicant in the identification parade held before a Magistrate and also deposed full account of the incident and implicated the applicant with the commission of the offence in his evidence recorded before the learned trial Court. There has been pleaded no enmity against the complainant hence act of complainant in picking the applicant / accused in identification parade as **'culprit'** cannot be

taken as ***false*** or *mala fide* unless otherwise established on total evaluation of evidence which, needless to say, is not the **'bail-stage'.** It is also worth adding that complainant in the instant case had received fire-arm injuries which, *prima facie,* least establishes happening of the incident. The contention that the matter requires further inquiry found no force as the case of further inquiry would only be made out when data collected by the prosecution was not sufficient to provide reasonable ground for believing that a prima facie case does not exist against the accused. In the case in hand enough evidence is available on record to indicate, *prima facie*, that the applicant/accused has committed offence falling within the ambit of prohibitory clause of Section 497, Cr.P.C. Furthermore, in terms of report submitted by Incharge CRO/CIA, Karachi, the applicant is a habitual offender and involved in 07 other cases of different police stations besides the present one. It may well be added that applicant / accused is charged for such an offence which, *otherwise,* seriously hurts the concept of safety / security of society and when there comes a report of habitually of accused in committing such offences then this circumstance would reflect upon claim of bail. Reference is made to the case of *Muhammad Faiz v. State* 2015 SCMR 655 wherein it is observed as:-

> *"6. …We may observe that right of an accused to the concession of bail in a cognizable offence is not absolute. It is the discretion which a Court exercises by transferring the custody of an accused from Jail to the Court, which discretion is normally withheld if the accused abuses the concession by repeating the offence after the grant of bail. The criminal cases against the petitioner prior to the case in hand, prima facie, attracts the aforesaid established norms.*

No evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the complainant or to police to falsely implicate the applicant. It is a trite law, as discussed above, that at the stage of bail the deeper appreciation is not permissible but as far as the evidence

which is on the surface of record of this case shows that the applicant is prima facie involved in this crime, therefore, applicant / accused has failed to make out a case for bail . As regards the case law cited by the learned counsel for the applicant, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the applicant.

10. In the above circumstances, prima-facie, there are reasonable grounds to believe that applicant/accused has committed alleged offence, therefore, I am of the considered view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application being devoid of merit is **dismissed** accordingly.

Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of case.

JUDGE

Sajid