

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

Cr. Bail Application No.S-722 of 2018.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 25.02.2019

Mr. Muhammad Nawaz B. Jamali, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G.

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Zulfiqar Ahmad Khan, J.- Through the instant Criminal Bail Application, applicant seeks post-arrest bail in Crime No.188 of 2018, registered at Police Station Badin, u/s 324, 147, 148, 149, 109, 395, 337-F(iii), 504, 337-H(ii) PPC.

2. Concisely facts of the case are that complainant owned some qabooli land in Deh Daftri, which he used to cultivate while accused Jumoon Bughio was not on good terms with them on land affairs. It is alleged that on 19.06.2018, the complainant, his brother Ramzan and his Kamdar Noor Muhammad were sitting in Otaq, where at about 05:30 p.m. accused Jumon, Sikandar, Abdul Hameed armed with guns, Nadir armed with repeater, Ali Haider armed with pistol, Razik Dino, Mitho , Photo armed with hatchets, Papo, Ramzan, Umar and Muard armed with cudgels came there and while abusing the complainant party, accused Jumo with intention to kill the complainant fired from his gun, however, due to falling on the earth, he was saved himself. Thereafter, accused Sikandar made straight fire at Ramzan and some pallets were hit on his right shoulder and head. Then accused Ali Haider robbed a mobile phone of Samsung company and cash Rs.5000 from complainant; accused Nadir robbed a mobile and cash of Rs.2000/- from the pocket of Ramzan

and thereafter all the accused robbed one Mund Guard Hybrid Seed amount to Rs.35,000/- as well as fertilizer. Thereafter, all accused ran away while abusing the complainant party. After obtaining order from the Ex-Officio Justice of Peace, Badin, complainant lodged the instant F.I.R.

3. Learned counsel for the applicant *inter alia* contends that the applicant is innocent and has falsely been implicated in this case by the complainant in order to pressurize him being complainant in Crime No.162/2018 to withdraw the said case or compromise with them (accused); that the F.I.R. is delayed for about 24 days without any proper explanation though the F.I.R. has shown commission of robbery in day time even in village of Malla community in Deh Dafri, which admittedly is a thickly populated village, no impartial persons have been associated. Learned counsel further submits that to the contrary the complainant party (present case) has actually committed the offence for which F.I.R. bearing Crime No.162/2018 was promptly lodged on 19.06.2018, where the complainant of the instant F.I.R. in order to save their skin from the said case has lodged the instant F.I.R; that per F.I.R, admittedly the applicant did not repeat the fire, therefore, his intention as to the commission of offence under section 324 requires further inquiry; that admittedly no hurt was caused to the complainant by the applicant; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. He lastly prayed for grant of post-arrest bail to the applicant.

4. Conversely, learned APG opposed this bail application and contended that the name of applicant / accused is mentioned in the F.I.R with specific role of causing injury to the injured; that there is sufficient evidence available on record connecting the applicant with commission of offence, as such, he is not entitled for concession of bail.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Perusal of the record reveals that applicant is nominated in the F.I.R., however, the F.I.R. has been lodged with an unexplained delay of 24 days and due consultation and deliberation during such a long period cannot be ruled out. According to the F.I.R, applicant Jumo caused gun shot injury to the complainant, but admittedly he has not repeated the same which prima facie, shows lack of intention on his part to commit murder of the complainant, thus ingredients of section 324 PPC are not attracted in the prosecution case and as to the vicarious liability of the applicant it can be ascertained after trial; that the applicant is 72 years of age and it does not appeal to a prudent mind that a man of such an age can act in a manner as alleged in the F.I.R; that no adversarial role has been assigned to the applicant; that although it is mentioned in the F.I.R. that after the incident complainant party went to Police Station and obtained letter for medical treatment of the injured, but no such N.C. report has been brought on record to substantiate this assertion; that admittedly there is counter version with regard to one and same incident and which party is aggressor and which is aggressed one, would be ascertained only after trial of the case; that no recovery has been made from the applicant; that no incriminating evidence has been collected against the applicant; that almost all the accused persons from both the sides are on bail/interim pre-arrest bail, therefore, in the circumstances at hand, the applicant/accused is also entitled for such concession. As far as the delay in lodging of the F.I.R is concerned, in the circumstances of the case, as discussed is fatal to the prosecution case; albeit such aspect can be considered coupled with other material collected by prosecution at trial; that no sufficient evidence connecting the applicant with commission of the alleged offence is available on record. In these circumstances, grant of bail is a rule and refusal is exceptional. Under section 497(2), Cr.P.C. bail is to be allowed if it appears to the Court that there are

sufficient grounds for further enquiry into the guilt of the accused. Now what would constitute as sufficient grounds for further enquiry would depend on the peculiar facts of each case and no hard and fast rule can be laid down for that purpose. Every hypothetical question which can be imagined would not make it a case of further enquiry simply for the reason that it can be answered by the trial Court subsequently after evaluation of evidence. Broadly speaking, the condition laid down in clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further enquiry into the guilt of the accused which means that the question should be such which has nexus with the result of the case and may show or tend to show that accused is not guilty of the offence with which he is charged. Further, this is a case of counter/two versions. In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party in another F.I.R, it is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed against. In this context, I am fortified by the case of **Shoaib Mehmood Butt v. Iftikhar-ul-Haq and 3 others** (1996 S C M R 1845).

7. In view of the above, while making tentatively assessment, *prima facie* the applicant has been able to make out his case as of further inquiry, as envisaged under section 497 (2) Cr.P.C. Accordingly, the instant bail application is allowed and the applicant is granted bail subject

to his furnishing solvent surety in the sum of Rs.100,000/- (one hundred thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

8. Needles to mention here that observations made hereinabove are tentative in nature and thus will not prejudice the case of either party in trial.

JUDGE

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