

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

Cr. Bail Appln. No.S- 620 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 18.03.2019.

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Mr. Agha Ghullam Abbas, Advocate for applicant alongwith applicant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General

SHAMSUDDIN ABBASI, J:- Applicant seeks pre-arrest bail in Crime No.136/2013 registered at Police Station Sinjhor District Sanghar for offences punishable under Section 302, 34 PPC.

2. It is alleged by complainant in the FIR that on the day of incident they heard fire shots, they went there and saw that deceased Muhammad Azeem had sustained injuries and was in injured condition. It is further alleged that injured disclosed that accused Nawab had caused firearm injuries to him on the pretext of Karo Kari (Siyahkari) . Complainant party also saw the present applicant (empty handed) while running alongwith co-accused Nawab, Sachal and Jahan from the place of incident.

3. Learned counsel for the applicant submitted that no specific allegation has been leveled against the applicant except that while he was running alongwith co-accused complainant party had seen him; that complainant party is not the eye witness of incident and the case rests upon the statement of deceased who disclosed that accused Nawab caused firearm injuries to him; that as per FIR specific allegation has been attributed to co-accused Nawab; that this Court has already granted bail to co-accused Jahan and in the present case the

role of present applicant is identical to the role of co-accused Jahan. He has prayed for confirmation of the interim pre-arrest bail.

4. On the other hand, learned D.P.G has raised objection to the grant of bail on the ground that present applicant remained absconder for about 05 years however, he has admitted the fact that role of present applicant is on same footings as to the case of co-accused Jahan.

5. Heard learned counsel for the applicant, learned D.P.G and perused the material available on record.

6. From the perusal of FIR it appears that complainant party is not the eye witness of the incident and there is evidence of last seen against the applicant. It is also an admitted fact that applicant was shown empty handed while running from the place of incident and co-accused Nawab and his brother Sachal were shown duly armed with pistols. It is also pertinent to mention that the case of prosecution rests upon the statement of deceased who disclosed that co-accused Nawab had caused firearm injuries to him. As far as the point of absconsion is concerned, I am fortified with the case of Mitho Pitafi v. The State reported in 2009 SCMR 299, in which the Honourable Supreme Court has held as under:-

“According to F.I.R., neither any role has been attributed to the petitioner nor his presence has been shown at the time of occurrence. Vide order, dated 18-2-2002, co-accused namely Jam Patafi has been released on bail by the learned trial Court but the concession of bail was declined to the petitioner on the ground that he was fugitive from law. Learned High Court of Sindh as well as learned trial Court has rejected the bail of petitioner on account of absconsion and not on merit. It is well-settled principle of law that bail can be granted if an accused has good case for bail on merit and mere absconsion would not come in way while granting the bail. We are, prima facie, of the view that the learned High Court has not appreciated the facts and circumstances of

the case in its true perspective while declining bail to the petitioner.”

7. In view of the dictum laid down by Honourable Supreme Court in the case supra, the applicant has good case on merits and mere absconsion will not come in the way of applicant. Moreover, co-accused Jahan has also already been admitted on bail by this Court vide order dated 07.05.2018 and the case of present applicant is on same footings hence on the rule of consistency the applicant is also entitled for the same treatment. Case has been challaned. Applicant is attending the trial Court regularly. No purpose would be served to keep him in jail.

8. In view of above, the case of present applicant calls for further enquiry in terms of Section 497(2) Cr.P.C. Accordingly, I allow this bail application and admit the applicant to pre-arrest bail on the same terms and conditions.

JUDGE

Tufail/PA