

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 174 of 2018

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 06.06.2018

Decided on : 11.06.2018

For Applicant : Mr. Mirza Nazim Baig, Advocate.

For State : Ms. Seema Zaidi, D.P.G alongwith SIP M. Abid K.K. of Ps Korangi, Karachi.

Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 1089 of 2017, by the Ist Additional Sessions Judge, Karachi-East, vide order dated 11.08.2017, the applicant Saeed Noor son of Noor-ul-Haq has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post pre-arrest bail in case crime No. 242 of 2016, under Sections 324/397/511 PPC registered at P.S. Korangi, Karachi.

2. The brief facts of the prosecution are that complainant namely Muhammad Saleem Mushtaq recorded his statement under Section 154 Cr.P.C in Emergency Ward of JPMC, Karachi on 22.06.2016, wherein he stated that he is residing at Plot No. C/20, Sector 32/A, Bangali Para Korangi No. 1, Karachi working on the same plot in a factory as foreman. On 22.06.2016, he was busy in his work, in the evening time a truck No. JY-1084, was present for loading the factory items. At about 7.30 p.m when he was standing at the gate of factory, suddenly three boys, out of them face of one boy was muffled came, he run inside the factory, in the meantime, they started firing upon him with intent to commit his murder, two bullets hit him, one on right knee and the other on right arm. One bullet hit the owner Irfan Ansari, thereafter, Irfan Ansari also made fire upon the culprits, but they succeeded to flee away from the spot, hence this FIR.

3. During the course of hearing instant bail application, it is inter-alia contended by the learned counsel for the applicant/accused, that the applicant/accused is innocent and has falsely been implicated in this case with malafide intention and ulterior motives. He contended that the applicant/accused is behind the bar since 25.6.2016, but the learned trial court failed to consider the provisions of Statutory Delay in trial and dismissed the 3rd bail application without applying independent judicial mind as the diary sheets clearly transpire that the delay in trial was never caused on the part of the applicant/accused or his counsel but by the prosecution as well as Police. Per learned defence counsel, the learned trial Court failed to consider the case laws settled by the apex courts that the right of bail in case of statutory delay is clearly provided in law, as the word "shall" cannot be read as "may". He further contended that the maximum punishment under Section 324 PPC is ten years, while section 397 PPC contains punishment of seven years and where the case of accused falls under Section 324/34 PPC as alleged in FIR or falls under Section 397 PPC as alleged in the charge sheet, is a matter of further inquiry. He has relied upon "2014 P.Cr.L.J 482 Sindh and 2015 P Cr.L.J. 259 Islamabad". Per learned defence counsel, the matter requires further inquiry, whereas the applicant/accused is law abiding citizen and permanent resident of Karachi and it is a prima facie good case for release on bail.

4. Conversely learned D.P.G has vehemently opposed the grant of bail. She argued that injured P.W Muhammad Irfan Ansari has rightly identified the accused during identification parade before concerned Magistrate, therefore, she prayed for dismissal of instant bail application.

5. I have heard the arguments and also perused the available record. It reveals that accused was arrested on 25.06.2016 in

another crime bearing FIR No.247/2016 u/s 23(i)(a) Sindh Arms Act, 2013 and during the investigation he has confessed his guilt in present crime. Though admission before the police has no value in the eyes of law, yet applicant/accused has also been rightly identified by eye witness injured witness Muhammad Irfan Ansari during identification parade before concerned Magistrate. Learned counsel for applicant/accused during the course of arguments contended that owner of Factory namely Muhammad Irfan Ansari (injured), prior to identification parade has visited the Police Station and saw the applicant/accused over there. However, when he was asked as to whether applicant/accused has raised such objection before the concerned Magistrate during identification parade, he replied that applicant/accused has not raised any such objection before the concerned Magistrate. More particular, the empties recovered in present crime have been matched with the weapon recovered in aforesaid FIR, therefore sufficient material is available on record to connect the applicant/accused with the commission of present crime, I, therefore, not inclined to grant bail to applicant/accused. Accordingly, the present bail application is hereby dismissed. The case laws cited at bar by learned counsel for applicant/accused are distinguishable from the facts of present case.

6. The observations recorded above are tentative in nature, therefore, learned trial Court shall not be influenced in any manner whatsoever. However, the learned trial Court is directed to conclude the proceedings of present criminal case within three months' time, as the matter is pertaining to the year 2016.

JUDGE

Sajjad Ali Jessar