

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

Criminal Bail Application No. 333 of 2018

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

Heard on	:	06.06.2018
Date of order	:	14.06.2018
For Applicant	:	Mr. Waqar Alam Abbasi, Advocate.
For Complainant	:	Mr. Muhammad Asif Khudai, Advocate.
For State	:	Ms. Seema Zaidi, DPG.

Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 127 of 2018, by the trial Court, vide order dated 27.02.2018, the applicant Junaid Shah has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 122 of 2017, under Section 302, 324/34 PPC, after submission of challan sections added 397, 427/34 PPC, registered at P.S. Sahil, Karachi.

2. Succinct prosecution story as narrated in the FIR is that on 03.12.2017 complainant Faheem Ahmed's son namely Zafir Zubairi alongwith his friends went to Sea View on vehicle bearing No. AYB-721. That at about 1000 hours on the same day complainant received information through phone that his son and his son's friend namely Zaid sustained firearm injuries at Sea View and brought to South City Hospital. On receiving such information, he reached at hospital and found his son died, whereas injured Zaid informed that at 9.00 am they were coming and were crossing Water Tanker, their vehicle hit a heavy motorbike as a consequence motorcyclist fell down, whereas motorcyclist's friends, who were coming on Vigo Double Door vehicles and other vehicles opened fire upon them due to which they stopped their vehicle, thereafter persons sitting in these vehicles and on Vigo came down and started beating them and also took their mobile cell phones etc. and escaped away from the scene while firing upon the vehicle, hence this FIR.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has falsely been involved in this case by the police; that there is delay of about 09 hours in lodging of the FIR, which has

not been explained by the complainant; that there is no name of applicant/accused in the FIR and even in the 161 Cr.P.C. statements of the complainant as well as other P.Ws, which creates serious doubt; that the malafide on the part of prosecution and the police can be clearly determined from the fact that the confessional statement of co-accused Abdul Rehman was recorded on 16.12.2017 after 10 to 12 days of his arrest and meanwhile he was remanded in the physical custody of the police; that the present applicant/accused has been booked only on the basis of the confessional statement of co-accused Abdul Rehman, in which he has given the role of the present applicant/accused, but most surprisingly, he has not stated any act, which he has committed in that confessional statement; that the malafide on the part of the Investigating Officer can also be determined from the fact that he has written in the charge sheet that the identification parade application was dismissed by the concerned Court with the reasons that already co-accused has specified the role of the present applicant/accused and there is no need of identification parade in these circumstances, but if this Court go through the order passed by the concerned court on the identification parade application, it will clearly reveals that the said application was dismissed on merits with contention that no precautionary measures were taken by the Investigating Officer due to the reasons, the said identification parade application was dismissed, it also shows the biasness of Investigating Officer; that no any specific role has been assigned to the present applicant/accused by the complainant and by the other P.Ws except the co-accused, who has given the confessional statement on the instance of Investigating Officer to save the actual culprits; that according to the third remand dated 06.12.2017, the Investigating Officer of the case mentioned name of the present applicant/accused, which has no footing in the eyes of law as per article 38 and 39 of Qanoon-e-Shahadat; that prosecution has failed to produce any eye witness of the said incident; that after re-calling the interim bail of applicant/accused, the Investigating Officer has obtained three times P.C. remands for recovery of snatch property, but nothing has been recovered from the possession of applicant/accused; that during the course of investigation,

the Investigating Officer has released three accused persons under Section 497(b) Cr.P.C and on the same footing the case of applicant/accused requires further inquiry. He has relied upon the case law reported in 1997 P.Cr.L.J 1782 (Karachi), 1998 P.Cr.L.J. 179 (Lahore), PLD 1994 S.C. 65, 2005 YLR 1220 (Peshawar), PLJ 2005 SC (AJ&K) 65 (appellate jurisdiction), 2015 SD 758 (Fed. Shariat Court), PLD 1994 Lahore 385, 1996 SCMR 1845 (SC), 2008 P.Cr.L.J 87 (Karachi), 2002 P.Cr.L.J 1072 (Peshawar) and 1998 Cr.L.J 732.

4. Conversely, the learned State Counsel has opposed the present bail application on the ground that there is no enmity between the parties. He pointed out that co-accused Khawar just after his arrest during his interview took by T.V. anchors said that they have committed this offence, which was viral on Social Media. He prayed for dismissal of present bail application on further ground that co-accused Abdur Rehman, the eye witness of the incident while recording his statement recorded by the Magistrate under Section 164 Cr.P.C has clearly stated the role of the present accused in commission of the offence. He relied upon the case laws reported in 1991 SCMR 1849 and PLD 2009 S.C. 385.

5. I have carefully examined the record made available before this Court, gone through the citations/case laws put forth and minutely evaluated the arguments advanced by both sides, while going through the confessional statement of co-accused Abdur Rehman recorded under Section 164 Cr.P.C before learned IVth Judicial Magistrate South, Karachi, it transpires that present applicant/accused Junaid Shah was also chasing the ill-fated car alongwith other companions/colleagues in Red color Rivo. Upon stopping of the car, Junaid Shah also stopped Rivo Jeep being driven by him, he came out of it then he and co-accused Hammad broken the glasses of the car with weapon and beaten the inmates of the same, the said act is also substantiated in the F.I.R with clear expression, though F.I.R do not mention the names which is obvious. Record also reveals that the above act was done at a time when principal accused of this case, on seeing the injured persons in the car, had ran away from the place of occurrence, this exhibits that when Junaid

Shah the present applicant/accused was attacking the Car and beating and slapping its inmates, knew that there are injured persons in the said Car yet he continued his barbarian and brutal act, which cannot go unnoticed on mere technical pretexts. Such action was rather an act of furtherance to what had already happened.

6. It is very concerning that such terrible incident happened in broad day light on one of the busy thorough fares of the city in gangster like manner. Firing from moving vehicle could have injured or killed any other passer-by or passenger of other vehicles. There was also probability, may be remote, of saving life of deceased, if applicant/accused and other co-accused persons could have played active role to shift the injured to hospital, but they acted absolutely opposite what was required from a good citizen and human being, applicant/accused alongwith co-accused persons terrorized them already terrified persons. Such an act(s) and omission testament to an act of terrorism within the context of Anti-Terrorism Act, 1979. Due to reasoning and rational as discussed, applicant/accused is not entitled to the concession of bail.

7. From the above discussion and deliberation, it is explicit that the alleged offence do fall in and fulfil all the ingredients necessitated for trial under Anti-Terrorism act, 1979. Accordingly, Investigating Officer is directed to submit fresh Challan before the learned Administrative Judge of Anti-Terrorism Courts, at High Court of Sindh, Karachi by inserting section 7 (a) of A.T.A, 1979 therein. However, before submission of such fresh Challan, Investigating Officer should also comply with the following directions within fifteen working days' time hereof.

- i. Whether Arms Licenses of all the weapons used or carried during the incident are genuine, if so whether those were valid for the province of Sindh and if valid whether exemption as required under Section 144 Cr.P.C was granted by the competent authority to carry them. I.O. is recommended that permission to carry is always for self defence and not for publically exhibit or for offence.
- ii. Check and verify the genuine of the vehicle documents (Vigo/Rivo) and their ownership.

iii. Re-check and verify the correct residential addresses of all accused persons.

8. Bail application of the applicant/accused is therefore dismissed. It was observed that citations/case laws provided by the learned defence counsel are differentiated from the facts of the present case.

9. Needless to say that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

J U D G E

Faheem Memon/PA