

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

Criminal Bail Application No. 181 of 2013

Date	Order with Signature of the Judge
------	-----------------------------------

For hearing of Bail Application.

For Applicant	:	Mr. Zakir Leghari advocate
For complainant	:	Mr. Riaz Hussain Soomro, Advocate.
For State	:	Ms. Seema, Zaidi DPG
Heard on	:	07.06.2018
Decided on	:	26.06.2018

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 1072/2012, by the trial Court, vide order dated 03.10.2012, the applicant Pir Irshad Ali Shah S/o Pir Ghulam Abbas Shah has approached this Court, by filing instant bail application under Section 498 Cr.P.C, for pre-arrest bail in case FIR No. 83/2012, under Section 17(3) EHO, 1979 registered at P.S Tando Jam.

2. Brief facts of the prosecution case are that the complainant Ghulam Nabi lodged the instant FIR, stating therein that he is residing at the address provided in column No.2 of the FIR alongwith his brothers and family members. On 29.04.2012 they all were present in house, some of them awaking and some were sleeping and the gate of their house was opened, meanwhile, at about 06:30 am some persons namely Irshad Ali Shah, Pir Badar, Pir Abbas, Pir Qamar and three unknown persons, identifiable if seen again, all were duly armed, entered into their house and threatened them to remain silent and inquired about keys of Almirah on gun point, upon which they handed over the keys of Almirah to accused persons. After getting the keys of Almirah they went into a room from where they took the licensed Repeater of Wazir, which was hanging on the wall of said room and also opened the Almirah and started taking/looting articles from it, upon which sister of complainant

namely Amina resisted them, in retaliation accused persons started beating her, due to which blood started oozing from her, on which she made hue and cry, consequently brothers of complainant awaked and grabbed with accused persons in order to get their associate free to which other accused persons started firing as a result whereof son of complainant namely Asad Ali received injury on his leg and three of accused persons also received injuries, finally they succeeded to apprehend two of injured accused persons, however, other accused persons, one of them was injured fled away in Mehran car and black coloured Toyota Corolla alongwith cash Rs.1,50,000/- and gold ornaments. Thereafter, they/complainant party immediately informed the police, who came at the place of incident and took injured accused persons alongwith them to Police Station, whose names were known to them/complainant party later on as Bashir S/o Abdul Rasool & Khalid Hussain S/o Kajla Khan. Thereafter they/complainant went at the Police Station and lodged the present FIR.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has been falsely implicated in this case by the complainant due to ulterior motives and malafide intentions and previous enmity of civil litigation over a land. Per learned counsel for applicant/accused no such incident had taken place and the instant FIR is false and fabricated and is an attempt to counter the incident which has actually taken place on the same day and time and such FIR bearing No.84/2012 u/s 302/324/148/147 was lodged at same Police Station. Learned counsel for applicant/accused next contended that on same date and time the complainant party, duly armed arrived at disputed plot and attached upon the farmers/labours of applicant/accused, who were working at same plot, due to which Bashir Ahmed (co-accused) and

Khalid Hussain (co-accused) had sustained injuries, while Shohrab Magsi died and such FIR bearing No.84/2012, as referred to above, was lodged at same Police Station. Per learned counsel for applicant/accused, neither any specific role has been assigned to present applicant/accused nor there is any evidence against the applicant/accused, which could connect the applicant/accused with the commission of alleged crime and the case of applicant/accused requires further inquiry. The learned counsel for applicant/accused also contended that no independent eye witness has been cited in present case as mashir, which creates serious doubts and the case requires further inquiry. Learned counsel for applicant/accused lastly contended that the trial of present FIR is at its verge, hence he prayed that bail may be confirmed. In support of his arguments the learned counsel for applicant/accused relied upon the case laws reported as (i) PLD 1997 Karachi 194, (ii) 2011 SCMR 1332, (iii) 2012 ULR 788, (iv) 2012 MLD 355, (v) 2005 MLD 535 & (vi) 2005 MLD 494.

4. Learned D.P.G assisted by learned counsel for complainant has strongly opposed the bail application on the ground that the applicant is very much nominated in the FIR with specific role. They further contended that applicant/accused party are revengeful and they want to kill all the members of complainant party so that the none should be spared to follow the cases. They also contended that woman namely Amina had been mercilessly killed by accused persons and they also caused injuries to son of complainant Asad Ali, therefore, the applicant/accused is not entitled for confirmation of bail. In support of his arguments the learned counsel for complainant has relied upon the case laws reported as (i) 2005 YLR 3104, (ii) 2007 YLR 838, (iii) 2000 P.Cr. L.J 622, (iv) 2012 YLR 1314 & (v) PLD 2013 Lahore 651.

5. I have heard the arguments of both the parties and also perused the material available on record. The enmity between both the parties on a piece of land is an admitted position. The applicant/accused side has also lodged the FIR bearing No.84/2012 against the complainant party on the same day, meaning thereby, they are admitting the occurrence of present crime. Further, one lady has lost her life due to injuries caused to her body in result of firing done by applicant/accused, therefore, applicant/accused is not entitled for extra ordinary relief. Accordingly, order dated 01.03.2013, whereby, interim pre-arrest bail was granted earlier to applicant/accused is hereby recalled and present bail application is dismissed. The case laws relied upon by the learned counsel for applicant/accused are distinguishable from the facts and circumstances of present case.

6. The reasons recorded above are tentative in nature and will not prejudice case of either party.

J U D G E