

*Order Sheet***IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANA.****Cr. Bail Application No. S- 405 of 2019.**

Date	Order with signature of Hon'ble Judge
	1.For orders on office objections as flag A. 2. <u>For hearing of bail application</u>

**26.9.2019.**

Mr. Razi Khan Nabi Bux R. Chandio, Advocate for the applicant.  
Raja Imtiaz Ali Solangi, A.P.G for the State.

**ORDER.**

**ARSHAD HUSSAIN KHAN-J.** Applicant Mukhtiar son of Allam Khan Chandio seeks post arrest bail in Crime No.85/2018 for offences under sections 302, 114, 148, 149, PPC registered at Police Station Warrah.

2. Briefly the facts of instant case are that on 07.11.2018 the complainant reported the incident to police station Warrah stating therein that he had a matrimonial dispute with Muhammad Hassan and others, therefore, they were annoyed with the complainant party. On the day of incident i.e. 07.11.2018 at 09.00 a.m. complainant along with his father namely; Rab Nawaz aged about 50/55 years, uncle Imam Din and Abdul Ghaffar, both sons of Wali Muhammad, were waiting for transport at the Sim Bridge for the purpose of going towards town. Meanwhile, at 9-00 a.m. five accused persons on two motorcycles came there who were identified to be Muhammad Hassan with lathi, Hassan Chandio, Hamid Chandio, Nadir Chandio and Mukhtiar Chandio. They took out pistols from the fold of their trousers. Accused Muhammad Hassan instigated others to kill Rab Nawaz. On his instigation, accused Hassan, Hamid and Mukhtiar fired from their pistols which hit Rab Nawaz on different parts of his body who fell down

on the ground. The accused persons fled away from the scene of offence. The complainant having found his father Rab Nawaz seriously injured, shifted him to CMC Larkana but the injured succumbed to injuries and was pronounced dead as such F.I.R was lodged to the above effect.

3. After registration of the FIR, the investigation followed and in due course, the present applicant was arrested and sent up to stand trial where he moved his bail application [after arrest] which was declined, vide order dated 06.5.2019, given rise to the filing of instant bail application before this Court.

4. Learned counsel for the applicant has mainly contended that the applicant is innocent and has been falsely implicated in the case. It is further contended that the complaint himself admitted in the FIR that a matrimonial dispute is going on between the parties and further all the prosecution witnesses are closely related *interse*, therefore, false implication of the present applicant is apparent in the case. He has further contended that there are contradictions in the FIR and statements of PWs as well as medical certificate. According to FIR/statements of PWs, the deceased received five injuries whereas the medical certificate states that the deceased received four injuries out of which only in his abdomen. Furthermore, the applicant is an employee in the local government department and on the day of the alleged occurrence, he was performing his duty in the Town Committee, Warrah. It is also argued that from the evidence, available on the record, no reasonable ground is existed to believe that the applicant is a guilty of alleged offence. Learned counsel further contended that the case has been challaned and the applicant is no more required for further investigation. On all these scores, learned counsel urged that the prosecution case against the present applicant calls for further enquiry, therefore, he is entitled to the concession of bail.

5. Conversely, learned Assistant Prosecutor General contended that the applicant has been named in the FIR with specific role of committing murder with the help of his accomplices, hence the applicant having involved in such a brutal act, does not deserve any leniency; and while supporting the impugned order he has vehemently opposed instant bail application.

6. I have heard learned counsel for the applicant/accused, and learned Assistant Prosecutor General Sindh for the State and have also gone through the material available on the record.

7. Perusal of the record of the case reveals that the applicant is well nominated in the FIR with ocular account by the complainant. The eye-witnesses of the incident also named him as one of the culprits in their statements. The existence of some matrimonial dispute between the parties is not sufficient to say that they have been falsely involved the accused persons in the case, especially when the FIR was lodged on the same day without any delay. In the present case, the plea of *alibi* was also taken, which can only be proved after evidence and the same cannot be considered at the bail stage as it requires evidence. Furthermore, as per FIR, the applicant is shown having armed with the weapon and there is a specific allegation of firing, which shows the ocular account is also available. As such the applicant, it seems, associated with the other arrested accused and further he was not only shown available at the scene of occurrence but also took part in the alleged firing, hence common intention is found there and this common intention is not only transpiring from the body of FIR but it is also reflecting from the statements of witnesses recorded during the investigation. Insofar as the allegation regarding existence of enmity between the parties due to matrimonial dispute is concerned, if it is considered that there is animosity between the parties, then it is settled law that enmity itself is a double-edged weapon which cuts both side.

8 It is settled law that for deciding the bail application the court has to make the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. In this respect reliance can be placed on the cases of Saleh Muhammad v. The State [PLD 1986 SC 211] and The State v. Zubair and 4 others [PLD 1986 SC 163].

9. In view of the above position on the facts and law coupled with the dictum laid down in the cases referred to above, I am of the opinion that the present applicant, being involved in such a heinous offence, which falls within the ambit of prohibitory clause of section 497, Cr.P.C., has failed to make out a case for concession of bail and as such instant bail application is dismissed.

10. Needless to state that the observations made herein are tentative in nature and only for the purpose of instant bail application and shall not influence the trial court while deciding the case.

JUDGE