

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

Cr. Bail Appln. No.S- 315 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Aqeel Ahmed Abbasi.

1. For orders on office objection.
2. For hearing.

31.05.2013.

Mr. Ghulam Sarwar Chandio, Advocate for Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General
Sindh.

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O R D E R

Being aggrieved and dissatisfied with the order dated 11.04.2013 passed by learned Sessions Judge Badin, whereby the bail application of the Applicant was dismissed, the Applicant has filed instant bail application/s 497 Cr.P.C seeking his release on bail subject to furnishing surety.

2. Brief facts as stated in the FIR are that the complainant Muhammad Yakoob is residing in their own village near Dargah Gul shah, Taluka Tando Bago and cultivating the agricultural land of Sabir Mangsi on harap basis, Sanaullah Mangsi use to misbehave with complainant's ladies, on which act, complainant asked Sabir that they are not cultivating their land and will do another place, for which Sabir annoyed and said to the complainant that he will not spare and kill them. Complainant alongwith his family members was sleeping in his house, during night at 2.00 a.m. complainant heard the firing from eastern side in the street of the house, complainant and his wife awoken and saw on the light of torch that accused Sanaullah S/o Ghulam Hyder Mangsi armed with pistol (2) Sabir son of Ghulam Hyder Mangsi armed with pistol (3) Ghulam Hyder armed with repeater entered into the house of complainant, during this complainant's sons

namely Attaullah and Sikandar also awaken and complainant party enquired from the accused persons as to why they have entered in the house, all the accused in combined voice asked that today they will see to us and will not spare them alive, thereafter Sanaullah Magsi made straight fire from his pistol with intention to commit murder, which hit on complainant's wife namely Mst. Fiza and she fell down on the ground and Sabir Magsi also made firing, but complainant party hide themselves to save their lives thereafter all the accused persons alongwith weapons and one unknown person already standing near the car boarded in Car, which was standing near the house of complainant and went away to the eastern side, thereafter complainant saw that fire had hit his wife Fiza on the left side and blood was oozing and she died, due to fear the complainant took the dead body of deceased Fiza at Olya/Dargah Gul Sherh Chokhandi and informed the relatives and Ghulam Hussain Khaskheli and others came there leaving them at the dead body the complainant has come to make complaint that accused persons namely Sanaullah Magsi aged about 28 years, Sabir Magsi aged about 35 years and Ghulam Hyder aged about 55 years and one unknown person to whom they can identify on seeing, all accused persons with common intention annoyed on refusal of harap entered in to their house and accused Sanaullah made straight fire of his pistol and murdered complainant's wife Fiza and Sabir Magsi also made fire.

3. Counsel for the Applicant states that the Applicant is innocent and has been falsely implicated in the instant crime by the Complainant party, whereas, as per contents for FIR, no specific role has been assigned to the present Applicant in the alleged offence. Per learned Counsel, the co-accused namely Sanaullah has been assigned specific role of straight firing at the deceased Mst. Fiza with pistol, who died subsequently on account of fire arm injury whereas in the FIR there are allegation against the present Applicant of ineffective

firing. Per learned Counsel, as per MLO report, cause of death of the deceased namely Mst. Fiza is on account of one fire arm injury which was allegedly caused by co-accused Sanaullah. Similarly, as per ballistic expert report, the empties which were found inside the house were fired from the pistol by co-accused Sanaullah. Learned Counsel for the Applicant further states that under similar circumstances, co-accused Ghulam Hyder has been granted bail by this Court vide order dated 15.03.2013 in Criminal Bail Application No.D-853/2012 therefore, the matter requires further inquiry hence the Applicant may be enlarged on bail on merits as well as principle of rule of consistency. In support of his contention, learned Counsel for the Applicant has placed reliance in the case of Sono Ghanghro (2010 P.Cr.L.J 537) wherein, according to learned Counsel, after placing reliance on the judgments of Honourable Supreme Court in the cases of Faraz Akram V. The State (1999 SCMR 1360), Muhammad V. The State (1998 SCMR 454) and Mumtaz Hussain V. The State (1996 SCMR 1125) bail was granted to the Applicant in the case of ineffective firing. Learned Counsel has further placed reliance on the following cases:-

1. Hafiz Khuda Bakhsh v. The State (PLD 1988 Supreme Court 413),
2. Waryam V. The State (2006 P. Cr.L.J 1611)
3. Abdul Ghaffar V. The State (2009 P.Cr.L.J 187),
4. Gadai V. The State (2010 P.Cr.L.J 280)

4. Conversely, learned Additional Prosecutor General Sindh states that rule of consistency in the instant case cannot be applied as the co-accused Ghulam Hyder was granted bail for the reason that no overt act was assigned to him in the FIR, who was reportedly present at the place of incident with repeater, whereas as regards role of the present Applicant, in the FIR it has been alleged that the Applicant also made firing with his pistol. Learned Additional Prosecutor General Sindh further states that all the accused persons were

present at the place of incident with common intention to commit murder hence the Applicant may not be released on bail. However, learned Additional Prosecutor General Sindh did not controvert the fact that the case against the Applicant is of alleged ineffective firing.

5. I have heard the learned Counsel for the Applicant and learned Additional Prosecutor General Sindh, so also perused the record as well as case law relied upon by the Counsel for the applicant.

From tentative assessment of the record, it appears that the present Applicant has been assigned role of ineffective firing whereas no recovery has been effected from the applicant. The MLO's report shows that the cause of death was on account of fire arm injury which was attributed to co-accused Sanallah. The report of Ballistic Expert also suggests that the empties found inside the house were fired from the pistol recovered from co-accused Sanallah. Co-accused Ghulam Hyder has been granted bail keeping in view the fact that the injury is not attributed to him as he did not make any fire, whereas, in the instant matter also, prima facie it appears that the fire arm injury, which was reportedly the cause of death of the deceased, cannot be attributed to the present Applicant.

6. Keeping in view hereinabove facts and the case law relied upon by the learned Counsel for the Applicant, I am of the view that the Applicant has made out a case for further inquiry as the allegation against him is of ineffective firing whereas, on mere allegation of common intention to commit offence, bail cannot be refused. Moreover, to determine common intention matter requires further inquiry and same can be determined at the stage of trial after examining the material and the evidence on record. Reliance in this regard can be placed in the case of Faraz Akram V/s The State (1999 P.Cr.L.J 1360), and Mumtaz Hussain & others V/s The State (1996 SCMR 1125).

7. Accordingly, the Applicant is granted bail subject to furnishing solvent surety in the sum of Rs.200,000/- & P.R Bond in the like amount to the satisfaction of Trial Court. It is clarified that if the Applicant misused the concession of bail, the Trial Court is at liberty to proceed in accordance with law.

Needless to observe that the above observations are tentative in nature and will not influence the Trial Court at the time of trial.

Instant Criminal Bail Application stands allowed in the above terms.

JUDGE.

H.

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

Cr. Misc. Appln. No.S- 214 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objection. 2. For hearing.

31.05.2013.

Mr. Liaquat Ali Malak Advocate for the Applicant along with Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh along with SIP Abdul Latif Memon P.S Chamber.

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Pursuant to Court notice, SIP Abdul Latif Memon P.S Chamber has produced the alleged detenues namely Sht. Neela D/o Raghu along with her minor Prem and Sht. Neelam D/o Jeewan in Court and states that Sht. Neela was residing with her husband Paro Kolhi whereas Sht. Neelam was residing with her father Jeewan and further states that they were not detained as alleged by the Applicant.

The alleged detenu Sht. Neela present in Court states that she wants to go and live with her husband Paro Kolhi whereas Sht. Neelam states that he wants to live with her father. They are at liberty to live as per their wish.

Accordingly, Criminal Miscellaneous Application is dismissed.

JUDGE

H.

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

Cr. Misc. Appln. No.S- 73 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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31.05.2013.

Mr. Ishrat Ali Lohar and Ms. Parveen Chachar, Advocates along with Applicant and minors.

Mr. Ubedullah Chhajan, Advocate for Respondent No.1.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh.

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Learned Counsel for the Respondent No.1 has filed proposed settlement between the parties, which is taken on record, copy has been supplied to the Counsel for the Applicant, who request for time to go through the same.

By consent adjourned to 24.06.2013.

JUDGE

H.

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

Cr. Trf. Appln. No.S- 45 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Aqeel Ahmed Abbasi.

For Katcha Peshi.

31.05.2013.

Mr. Hidayatullah Abbasi, Advocate for Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General
Sindh.

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O R D E R

1. Through instant Criminal Transfer Application, the Applicant has prayed for transfer of Sessions Case No.54/2011 arising out of FIR NO.30/2010 registered at P.S Shahpur Chakar U/s 420, 465, 467, 468,471 PPC from the Court of Additional Sessions Judge Shahdadpur to any other Court.
2. Counsel for the Applicant has argued that the learned Presiding Officer had already passed a judgment whereby the Applicant was convicted on the charges, whereafter, on filing of an appeal bearing No.340/2012 before this Court, the earlier judgment passed by the learned Additional Sessions Judge, Shahdadpur, was set aside by this Court while observing that charge was not properly framed and no material question was asked from the accused in his statement U/s 342 Cr.P.C and the matter was remanded for retrial. Per learned Counsel, after remand of the case, the conduct of the learned Presiding Officer, who has already expressed his mind in the earlier round of proceedings, reflects that there is no likelihood that he will change his opinion and the Applicant will be convicted once again in a mechanical manner, whereas, entire exercise of retrial will be futile. He has further stated that even the bail application of the Applicant has been rejected by the same learned Presiding Officer vide order

dated 22.03.2013, which shows that he has pre-determined about the guilt of the Applicant. It has been prayed that in order to meet the ends of justice, the matter may be transferred to any other Court preferably at Hyderabad as most of the prosecution witnesses are residing at Hyderabad. In support of his contention, learned Counsel for the Applicant has placed reliance on the case law reported as AIR 1943 (Lah) 414 and AIR 1936 (Lah) 652.

3. Notices were issued and comments were called from the learned Presiding Officer, who has furnished the same on 23.05.2013.

4. Learned Counsel for the Applicant has while making further arguments also red out the comments filed by the learned presiding officer and submitted that the learned Presiding Officer in his comments, instead of furnishing any comments on the merits or otherwise of transfer application has once again expressed his opinion upon the merits of the case, which reflects that he has pre-determined mind and will definitely convict the present applicant once again, hence retrial by the same learned Judge will be a futile exercise.

5. Learned Additional Prosecutor General Sindh, after perusal of the comments furnished by the learned Additional Sessions Judge Shahdadpur, could not controvert the submissions made by the Counsel for the Applicant, and submitted that since there is no other contesting private party, except State, whose interest would be effected on transfer of the instant case to some other Judge, therefore, the matter may be transferred from Additional Sessions Judge Shahdadpur to some other judge in the interest of justice and fair play.

6. Keeping in view the above peculiar facts of this, comments of the learned Additional Sessions Judge, Shahdadpur and no objection by learned Additional Prosecutor General Sindh, instant Criminal Transfer Application is allowed. The learned District & Sessions

Judge, Sanghar is directed to transfer the Sessions Case No.54/2011 arising out of FIR No.30/2010 registered at P.S Shahpur Chakar U/s 420, 465, 467, 468,471 PPC from the Court of Additional Sessions Judge Shahdadpur, to the learned Sessions Judge, Hyderabad, who may either try the case himself or may transfer it to any other Additional Sessions Judge for disposal in accordance with law.

Criminal Transfer Application stands disposed of in above terms.

JUDGE

H.

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

Cr. Rev. Appln. No.S- 23 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For Katcha Peshi. 2. For orders on M.A 1056/12

31.05.2013.

None for the Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh.

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Neither the Applicant nor his Counsel is in attendance. It appears that after having filed instant Criminal Revision Application on 01.03.2012 no one has shown appearance on behalf of the Applicant. On the last date of hearing also no one was in attendance and the matter was adjourned with a caution that if nobody appears on the next date appropriate orders will be passed. In spite of intimation notice, neither the Applicant nor his Counsel is in attendance, who appears to have lost interest in proceeding the instant Criminal Revision Application, which is accordingly dismissed for non-prosecution along with listed application.

JUDGE

H.

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

R.A No.S- 27 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
	For orders as to non-prosecution of R.A. as Counsel for Applicant has not complied with the office objection since its presentation.

31.05.2013.

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Neither the Applicant nor his Counsel is in attendance. It appears that on 19.11.2012 when the matter was fixed for non-prosecution one week's time was granted for compliance. Thereafter, the matter was fixed on 10.12.2012 for the same purpose and no one was in attendance and further two weeks' time was granted for compliance. Similarly on 01.02.2013 matter was again fixed for orders as to non-prosecution and no one has shown appearance nor made compliance of the office objection. However, as an indulgence two weeks' further time was granted for compliance. Today, also neither the Applicant nor his Counsel is in attendance and matter is listed as to non-prosecution. It appears that the Applicant has lost interest in proceeding the instant Revision Application, which is accordingly dismissed for non-prosecution along with pending application.

JUDGE

H.

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

Cr. Bail Appln. No.S- 760 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on M.A 2675/13 2. For orders on office objection and reply by learned Counsel on reverse side of MA 2676/13 (if over ruled). 3. For orders on MA 2676/13
<u>31.05.2013.</u>	

Applicant/Surety Muhammad Aslam present in person.
Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh.

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1. Granted.
2. Over ruled.
3. Through listed application the Applicant/Surety has prayed for return of the surety documents, which were furnished pursuant to order of this Court dated 03.10.2012 whereby the Applicants/Accused were granted protective bail for 10 days subject to furnishing solvent surety in the sum of Rs.10,000/- each and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court.

Applicant/Surety present in Court states that the accused persons surrendered before the learned Trial Court within the stipulated period and were granted pre-arrest bail vide order dated 12.10.2012, which was duly confirmed vide order dated 17.10.2012 hence requests that the surety documents furnished before the Additional Registrar of this Court may be directed to be returned to him. Copy of letter dated 17.10.2012 has been annexed to this application.

Learned Additional Prosecutor General Sindh after perusal of the record does not oppose such request.

Accordingly, instant application is allowed and the Additional Registrar of this Court is directed to return surety documents to the Surety after proper verification and identification.

JUDGE

H.

ORDER SHEET

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

R.A No.S- 25 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on C.M.A 636/13. 2. For orders on statement.

31.05.2013.

Mr. Pirbhulal-U-Goklani, Advocate for the Applicants.

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1. Granted.
2. Counsel for the Applicants states that pursuant to directions of this Court as contained in order dated 19.11.2012 when the instant Revision Application was finally disposed of, the Applicant has filed certified copy of Extract from the Property Registrar Card in respect of subject property. He states that the Additional Registrar of this Court may be directed keep the same in safe custody. Order accordingly. Statement is taken on record.

JUDGE

H.

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

Cr. Rev. Appln. No.S- 23 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For Katcha Peshi. 2. For orders on M.A 1056/12

31.05.2013.

None for the Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh.

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Neither the Applicant nor his Counsel is in attendance. It appears that after having filed instant Criminal Revision Application on 01.03.2012 no one has shown appearance on behalf of the Applicant. On the last date of hearing also no one was in attendance and the matter was adjourned with a caution that if nobody appears on the next date appropriate orders will be passed. In spite of intimation notice, neither the Applicant nor his Counsel is in attendance, who appears to have lost interest in proceeding the instant Criminal Revision Application, which is accordingly dismissed for non-prosecution along with listed application.

JUDGE

H.