

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

CrI. Bail Application No. 35 of 2021

Date

Order with signature of Judge

For hearing of bail application.

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11th March 2021.

Mr. Shujat Ali Khan, advocate for applicant/accused.

Mr. Faheem Hussain Panhwar, Deputy P.G. Sindh.

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Through instant bail application, applicant Jamshed Iqbal son of Muhammad Iqbal, seeks post arrest bail in Crime No.149 of 2020 registered at Police Station Hydri, for offence punishable u/s 147/148/324 PPC.

2. Precisely, relevant facts of the prosecution case are that Iqbal and Junaid caused fire shot on Shahzad Ahmed and his mother and as per Shahzad Ahmed he and his mother received fire short injury caused by Iqbal and Junaid, thereafter present applicant snatched his pistol and caused fir. Admittedly medical report reflects that there is one injury caused to witness Shahzad Ahmed though there is allegation that present applicant caused fire shot but admittedly none received the injury. Besides, case is of sudden fear due to fight on kids; applicant's roll of vicarious liability can be determined by the trial court and bail cannot be withheld on the plea of common intention in cases of sudden fear, Hence, received on 31.01.2021 on a tip of, police party apprehended the present applicant/accused and recovered 4 patties/bars of Charas weighing about 1415 grams from his possession and sent up him for trial.

3. At the outset, learned counsel for the applicant/accused contends that applicant is in youthful age and is student of BSC and he has been arraigned in false case. Besides, he has placed on record Discharge Summary issued by Jinnah Post Graduate Medical Centre Karachi, which shows that applicant is in ailment of "Acute Hepatitis B positive"; such

summary is available at page No.45 of the file, which shows that on different occasion applicant/accused received treatment.

4. Learned Deputy P.G. though oppose the present bail application but could not furnish any plausible reason as to non-association of private person as witness.

5. Admittedly, in spite of spy information police officials failed to join the independent persons as witnesses and allegation of selling charas in the locality is not substantiated with any evidence. Since it is settled proposition of law that police officials are good witness as others but simultaneously it is the duty of police officer when there is possibility of joining the independent persons as witness, in such eventuality they must take all efforts to join the independent witness, in case of failure they shall justify with explanation, which is lacking in this case; applicant is not involved in any other case as per CRO; applicant is in ailment of Hepatitis B; applicant is a student of BSC, as per record produced by the counsel. It is settled proposition of law that bail cannot be withheld as conviction.

6. Keeping in view the above given circumstances, *prima facie*, applicant has succeeded to bring his case within the purview of subsection (2) of section 497 Cr.P.C, for this reason, he is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each and P.R Bond in the like amount to the satisfaction of trial Court.

Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of case

JUDGE

Sajid