

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1105 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application</u>	
<u>05-10-2022</u>	
	<p>Mr. Haad A.M. Pagganwala, Advocate for applicant. M/s. Shaikh Jawaid Mir and Shahryar Ibrahim Soho, Advocates for complainant. Mr. Talib Ali Memon, A.P.G.</p> <p style="text-align: center;">=====</p> <p>Omar Sial, J.: Two young men, Nabeel Hoodbhoy and Syed Raza Imam, on 22.11.2019 at about 3:15 a.m. were out on a drive when they were signaled to stop by a police party doing snap checking. Nabeel, who was driving the car stopped it and after answering some questions put to him by the policemen decided to drive off when asked to open the car's interior light. It appears that the possibility of the police finding a can of beer in the car made him take this unwise decision in the exuberance of youth. The police chased the boys' vehicle and some distance away the policeman sitting in the front passenger's seat opened fire on the boys. The bullet hit Nabeel on his neck and passing through his body also hit Raza. When their vehicle stopped, the three policemen in the vehicle stepped out, saw inside the victim's car and upon seeing the injuries they had caused, drove away. F.I.R. No. 149 of 2019 was registered under sections 302, 324, 427 and 34 P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. The terrorism charge was later dropped. The accused were subsequently arrested and identified as S.I. Abdul Ghaffar Memon (the applicant seeking bail), H.C. Muhammad Ali Shah and H.C. Aftab Ahmed. An identification parade was held in which Raza identified H.C. Muhammad Ali Shah and the applicant but did not identify H.C. Aftab Ahmed. H.C. Aftab Ahmed was subsequently granted bail but the bail seeking application of the applicant was dismissed on 29.04.2022 by the learned 1st Additional Sessions Judge, Karachi South. He has therefore sought bail from this court.</p> <p>2. Learned counsel for the applicant argued basically on one point i.e. the applicant did not pull the trigger and hence his case was on the same footing as</p>

that of H.C. Aftab Ahmed. Learned counsel argued that the applicant should be granted bail on the principle of consistency. Learned APG who was assisted by the learned counsel for the complainant supported the impugned order and submitted that the applicant was the head of the police party and thus had a higher onus on him. They both also argued that the criminal intent of the applicant was clear from the fact that all 3 policemen ran away from the place of incident and had they not done so perhaps Nabeel's life would have been saved. As regards the ground of consistency they opposed it by submitting that H.C. Aftab Ahmed was sitting in the rear portion of the mobile and had also not been identified by Raza.

3. I have heard the learned counsels and the learned APG. My observations and findings are as follows.

4. It is not denied that one shot was fired and that shot was fired by H.C. Muhammad Ali. It is also an admitted position that the applicant though head of the police party was driving the police mobile at the time the incident occurred. Nothing has been shown to me by the prosecution that H.C. Muhammad Ali fired on the instructions of the applicant. Even though the applicant was the head of the police party and played his part in chasing the car, such a fact would not ipso facto mean that the head of the police party was vicariously liable for the acts of his colleagues. Upon a tentative assessment, I am of the view that the applicant, being head of the police party, acted capably and in a manner which was expected of him, when he chased a vehicle which had sped away when the occupants were requested to open the interior lights of the vehicle. The police chased the offending vehicle for quite some distance and the 2 boys instead of surrendering to the law, preferred to keep trying to evade the police. At that point in time the police party was unaware that there were 2 decent and innocent boys in the car and that they carried nothing in the vehicle that had the potential to harm anybody. Things went wrong when the fire was made by H.C. Mohammad Ali Shah. It has to be determined at trial though as to what is the applicant's culpability for an act committed by his subordinate. The question of vicarious liability will have to be adjudicated upon by the learned trial court once it has the evidence in front of it. In the circumstances of the present case, and based on what material I have been shown, I do not think it can be said at this preliminary stage with certainty that the prosecution is in possession of sufficient

material on this count. At the same time it must also be seen as to why the 2 young men decided to drive off. It seems that the sole reason for doing so was that they got scared of the treatment that would be meted out to them over the sole can of beer which was in their presence. Such fear amongst the general public and the youth in particular is not a secret. The police high ups need to introspect and ensure that the police force develops into a people friendly force and not an oppressive force of which the common man is scared. It must also be ensured that proper training is imparted to officials on public duty to deal with similar situations. Trigger happy policemen should be reined in and acted against. Proper protocol to manage such situations should be in place and strictly complied with. Senior officers should be made responsible and answerable on compliance. It is simply not acceptable in a civilized society that a direct fire is made on a person followed by the inhumane act of leaving the injured in their car and driving away after having caused the death of a person. It was the police duty to ensure that proper and quick medical aid was provided to the injured. Regrettably, all the members of the police force that day, after the damage was done, preferred to run away from the scene. Such a sad and unnecessary incident must not be repeated. I have no doubt in my mind that the learned trial court will take all aspects of the case in mind when assigning culpability.

5. Upon a tentative assessment, as far as the applicant is concerned, there is no allegation of a pre-meditated and intentional murder. It is yet to be seen at trial as to whether a charge for *qatl-e-amd* under section 302(b) P.P.C. is made out against him. Prima facie, and at this preliminary stage, it appears that it might not. As regards consistency, while Raza may not have identified H.C. Aftab Ahmed, who was granted bail on this count, it is an admitted position that there was no mistake in the identity of the 3 policemen who were part of the police party that fateful morning. Their presence on that particular place of duty and on that particular mobile was well documented in the police records. If H.C. Aftab Ahmed is given the concession of bail then the current applicant, who also had a similar role, apart from the fact that he was driving the police mobile while H.C. Aftab Ahmed was sitting in the mobile, deserves the same concession. As mentioned above, merely the ground that he was the head of the police party, without any evidence to suggest that he ordered the firing, is not sufficient to

deny the applicant bail. In my opinion, the applicant's nexus with the crime he is charged for requires further inquiry.

5. The applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 200,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

6. Office shall ensure that a copy of this order is sent to the Inspector General of Police, Sindh for his information and compliance and for him to forward the same to the Deputy Inspector Generals of Police, Sindh for their information and compliance. A copy should also be sent to the learned Prosecutor General, Sindh for his information and appropriate instructions to his Prosecutors.

JUDGE