

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

Criminal Bail Application No.S-453 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>19-06-2023</u>	For orders on office objection. For hearing of main case. Mr. Altaf Sachal Awan advocate for applicant. Ms. Safa Hisbani A.P.G. Sindh.

MUHAMMAD IQBAL KALHORO, J:- On account of previous enmity, applicant along with co-accused duly armed with pistols, waylaid complainant, his brother Ali Khan and nephew Fiaz Ali near Zardari Chowk Mehran Colony Nawabshah on 18.11.2022 when they were going to city. After abusing them, co-accused namely Zameer Hussain, Mushtaque and Abdul Majeed directly fired upon Ali Khan critically injuring him. Applicant and co-accused Allah Rakhio, also armed with pistols, allegedly fired in air, and also upon complainant and his nephew in order to deter them from intervening. When the people started gathering on fire shot reports, the accused made their escape good. The injured subsequently died in treatment, hence FIR was registered.

2. Learned defense counsel submits that applicant is innocent; no active role has been assigned to him; no incriminating weapon was recovered from him; charge has been framed and applicant is no more required for further investigation; vicarious liability is yet to be determined in the trial. Hence, applicant is entitled to concession of bail. In support of his arguments, he has relied upon the case of 'GUL MUHAMMAD v. The STATE' (2023 SCMR 857). His arguments have been opposed by learned Assistant P.G. who submits that applicant's name is mentioned in FIR duly armed with the weapon from which he had fired.

3. I have considered submissions of the parties and perused material available on record including the case law relied at bar. Applicant's presence is shown on spot duly armed with a pistol from which he allegedly made fires. This allegation is *prima facie* supported from recovery of 03 empties of 12-bore and 10 empties of 30-bore pistols from the spot. At the stage of bail, only tentative assessment of the material is to be made and it is to be determined whether there are reasonable grounds showing connection of the accused with the commission of offence. Presence of applicant is not only supported in FIR but the witnesses have also confirmed his presence in

statements under section 161 CrPC. The role of applicant of making fires *prima facie* shows state of his mind inclined towards facilitating the main accused in commission of offence, a sufficient circumstance to establish vicarious liability on his part apparently. The charge has been framed and the case is ripe for trial. In the circumstances, and to serve ends of justice, I dismiss the bail application and direct the trial Court to examine material witnesses in three months, after which applicant would be at liberty to move a fresh bail application which, if filed, shall however be decided on its own merits.

4. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

Abdullah Channa/PS

JUDGE