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IN THE HIGH COURT OF SINDH
CIRCUIT COURT, LARKANA

CRL. BAIL APPLICATION NO.5/2014

Applicant : Awais Soomro,
through Mr. Yasir Arafat Seelro, advocate.

Respondent : The State,
through Mrs. Seema Imtiaz, APG.

Date of hearing : 30.05.2014.

ORDER

SALAHUDDIN PANHWAR, J.- The applicant / accused Awais has sought his release under Section 497 Cr.P.C. in Sessions case culminating by Crime No.42/2012 registered with police station B-Section Shahdadkot under section 302, 34 PPC.

2. The facts, arising out of the FIR, are that on 12.7.2012 at 1600 hours complainant Darshan Lal lodged the FIR with an allegation that he alongwith his brother Ajeet and other relatives (witnesses) went to Otaq of Mashooque Langh where at 02:00 pm accused / applicant Awais, Sadam Hussain and one unknown accused, came; complainant's brother Ajeet asked Awais to pay him his money on which all accused persons took out pistols from their folds and accused Awais made straight fire upon Ajeet Kumar which hit to him on back side of neck; accused Saddam Hussain and unidentified accused also made straight fire shots upon Ajeet Kumar



with intention to kill. On cries of complainant party accused persons went away. Injured was taken to hospital where he succumbed to injuries.

3. Learned counsel for the applicant has, inter alia, argued that applicant is an innocent and has been involved falsely; applicant is a juvenile ; co-accused has been granted bail by trial court on the ground of tender age; applicant has been in jail since date of his arrest i.e and even charge was framed on 13.11.2012 yet case has not concluded therefore, applicant / accused is entitled for his release on count of hardship even.

4. On the other hand the learned APG has not controverted the contentions raised by applicants" counsel.

5. I have heard the respective arguments, as advanced by either sides and have gone through the available material carefully. The perusal of the record makes it clear that status of the applicant as '**juvenile**' within meaning of the Juvenile Justice System Ordinance 2000 is not disputed. It is also surfaced that charge against the applicant / accused has been framed as '**juvenile**' hence his trial shall be conducted with reference to the Ordinance. It is also not disputed that the applicant / accused has been in continuous custody since last more than one year yet his trial has not been concluded. The position, being so, requires a reference to relevant provision dealing with '**arrest and bail**' of the Ordinance which is reproduced hereunder:-



Section.10—

(7) *Notwithstanding anything contained in the Code and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, **shall be released on bail.***

*(a) if, being accused of an offence punishable with death has been detained for such offence **for a continuous period exceeding one year** and whose trial for such an offence has not concluded;*


Undisputedly, the period of continuous detention of the applicant / accused has exceeded more than a year (almost one and half year) and deep diver into case diaries of the case does not make it clear that it was the applicant / accused who had occasioned such delay in conclusion of trial of the applicant / accused.

6. Without prejudice to above, in the instant case the victim was grown person who admittedly (per FIR) had asked accused persons, including applicant / accused, to return given money. This motive itself requires further probe because in a normal course of life a stranger (of different religion) is not believed to give money to a child. I refrain myself from going into deep on this count as it may cause prejudice to case of any of the sides, however, this has also made out a circumstance favouring to the applicant / accused towards his request for release on bail on hardship ground because bail to a juvenile '**may**' only be declined if there are exceptional circumstances, provided at the end of Section 10 of the Ordinance.



7. Regarding exception (s) it would suffice to say that admittedly co-accused Sadam Hussain, who was also charged with same offence, has been released on bail Under Section 10(7)(a) of the Ordinance and such order of release is still holding the field, therefore, this also makes out a ground of rule of consistency as instant bail application is also being pressed on the ground of hardship.

In view of what has been discussed above, I am of the view that the applicant / accused is entitled for his released on bail within meaning and objective of the Section 10(7)(a) of the Ordinance. Accordingly, the applicant / accused is ordered to be released on bail by short order dated 30.05.2014.


Judge 31/5/2014