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ORDER SHEET.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

3rd Cr. Bail Appln. No. S- 217 of 2015.

Date	Order with signature of hon'ble Judge.
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1. For orders on office objections as flag A.
2. For Katcha Peshi.

13.10.2015.

Mr. Ahsan Ahmed Qureshi, advocate for the applicant.

Mr. Yasir Arfat Seelro, advocate for the complainant.

Mr. Khadim Hussain Khoonharo, D.P.G.

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By this application, the applicant is seeking post arrest bail in Crime No.145 of 2012 of P.S Kamber under section 302, 324, 34 PPC.

2. Facts of the prosecution case as per FIR re that complainant Rashid Ali Brohi lodged FIR with P.S Kamber alleging therein that he has old blood feud with accused Ghulam Abbas and others; such cases are pending adjudication before the competent Court. On the day of incident i.e. 29.05.2012 he alongwith his brother Mohammad Soomer and nephews Javed and Sadam Hussain left their village Chutto Wah and proceeded to attend the hearing of case when his brother Mohammad Soomer and nephew Javed were on one motorcycle, while he and Sadam Hussain were on another motorcycle. When they reached near Jian Abro road in village Muhammad Panah Jagirani at about 8.00 a.m two motorcycles stopped ahead of them, four persons alighted and were identified to be Ghulam Abbas, Ahmed Nawaz, Riaz and Imdad. The accused persons stated that prior to this they (complainant party) had killed their persons and therefore, they would be done to death. Thereafter accused persons made firing from their pistols upon Mohammad

Soomer and Javed which hit them and fell down, while raising cries. Thereafter accused went away on their motorcycles. Complainant found that Mohammad Soomer was lying dead having firearm injuries, while P.W Javed was lying unconscious having firearm injuries. The complainant leaving P.W Saddam over the dead body of Mohammad Soomer, shifted injured P.W Javed to Taluka Hospital Kamber, from where he was referred to CMCH Larkana; complainant lodged the FIR.

3. After registration of FIR the investigation followed and the applicant was arrested on 13.02.2015 and sent up before the learned trial Court to face the trial where his bail plea was declined vide impugned order dt.28.03.2013. Thereafter bail application filed on behalf of applicant before this Court was dismissed as not pressed vide order dated 20.08.2015 with direction to the trial Court to examine at least complainant and P.W Javed preferably within two months. However trial Court failed to examine the above names witnesses within specified time therefore, again bail application was repeated before the trial Court again it was dismissed by the trial Court vide order dated 13.03.2014 and then bail application was filed before this Court but same was also dismissed vide order dated 14.11.2014 with directions to the learned trial Court to conclude the trial positively within a period of three months but the trial Court again failed to comply with the directions of this Court, hence the applicant repeated bail application before the trial Court on the ground of statutory delay in conclusion of trial despite specific directions issued by this Court.

4. It is interalia argued that despite directions issued by this Court two times, the trial Court has failed to conclude the trial; there are general allegations against the present applicant that he alongwith other accused fired at complainant party and it is yet to be determined at the trial as to who caused fatal shot; admittedly there is standing murderous enmity between the applicant and complainant party therefore, false implication of the present applicant can not be ruled out; no recovery of crime

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weapon was effected from the present applicant to connect him with the commission of offence.

5. In contra, learned D.P.G appearing on behalf of the State and Mr.Yasir Arfat Seelro, counsel for the complainant opposed the grant of bail on the ground that delay in conclusion of trial is not on the part of prosecution but defence counsel sought time on several dates of hearing; applicant is named in the FIR with specific role of causing straight firing at complainant party in which one person lost life and another got injured therefore, he is not entitled to the concession of bail.

6. Perusal of record reflects that in compliance of directions issued to the trial by this Court, the complainant and eye witnesses namely Javed Ali and Sadam Hussain were examined by the prosecution on 03.02.2015 when the learned defence counsel appearing for applicant as well as co-accused Riaz did not cross examined the above P.Ws. Thereafter P.Ws are attending trial Court regularly but learned defence counsel are seeking adjournments which proves that learned trial Court has done substantial progress in the trial but the delay in conclusion of the trial is on the part of defence side. The case diaries brought on record also reflect the same position. It is settled principle of law that it is to be seen that whether delay is designed by the prosecution or defence side, mathematical calculatin is not permissible under the law. With regard to merits already bail was declined by this Court, hence same ground can not be considered. Accordingly, bail application is dismissed.


JUDGE