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

Cr. Bail Application No. S-68 of 2017

Applicant : Mehar Ali son of Mohammad Hassan through
his Advocate Mr. Mohsin Ali Pathan.
Respondent : The State through Mr. Aijaz Mustafa Samtio,
DDPP.
Complainant : Mr Muhammad Murad Chachar and
Mr. Abdul Rehman Bhutto, Advocates.
Date of hearing : 12.6.2017.

ORDER.

1. The applicant Mehar Ali Jakhrani is seeking post arrest bail in FIR No.20/2016, for Offence U/S 302, 148, 149 P.P.C registered on 28.12.2016 at 11-00 a.m, at Police Station R.D 109 District Kashmore @ Kandhkot.

2. Brief facts of the prosecution case as per FIR are that complainant Ghulam Nabi Jakhrani lodged complaint with Police Station R.D-109 that he had a dispute with accused Khan Muhammad and others over certain issues and they used to issue threats to them. He asserted in the report that on 28.12.2016 at 11-00 a.m, he alongwith his nephews Bilawal, Tarati, and his relative Qadir Bux came at Rasaldar on their motor Bikes for some work, while returning to their village, they reached at northern bank of Shahi Canal near village of Abdul Waheed Domki, five accused persons came from back side on their 125 motor bikes and stopped the complainant party, the accused were identified as Khan Mohammad son of Ali Jan, Shafi Muhammad son of Atta Muhammad, Mehar Ali son of Mohammad Hassan (present applicant), Adab Hussain son of Suhrab, Babal son of Ali Bux and Abdul Nabi son of Ghulam Hussain all by caste Jakhrani

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resident of village Atta Mohammad Jakhrani Taluka Kashmore. As per FIR they were duly armed with country made pistols. It has been alleged by the complainant that accused Khan Mohammad raised Lalkara and opened direct fire upon his nephew Bilawal which directly hit him on the right side of his back, accused Mehar Ali directly fired upon Bilawal, which also hit him on his right forearm, accused Babal directly fired upon Bilawal, which hit him on below of his right knee, who sustained injuries and fell down. Thereafter accused party escaped away from the place of incident. Injured Bilawal was taken to Civil Hospital at Kandhkot whereafter he was referred to Larkana Hospital for further treatment, thereafter on 28.12.2016 at 2100 hours, complainant lodged FIR at Police Station R.D-109 for offence under section 324,148,149-PPC. Record further reflects that injured Bilawal passed away on 30.12.2016 during treatment. Station House Officer submitted interim charge sheet on 14.01.2017 showing the applicant Mehar Ali under arrest, however he submitted final report under section 173 Cr.PC, on 27.01.2017 recommended the name of applicant to be released u/s 497 Cr.PC due to lack of evidence. The Learned 1st. Civil Judge and Judicial Magistrate Kashmore vide order dated 28.01.2017 did not agree with the opinion of the Investigating Officer and remanded the applicant to the Judicial custody. The applicant moved bail application No.19/2017 before the Learned Sessions Judge, Kashmore @ Kandhkot, who vide order dated 14.02.2017 dismissed the bail application of the applicant.

3. Mr. Mohsin Ali Pathan Learned counsel for the applicant has contended that the Investigating Officer has recommended the case of the applicant to be placed in column NO.2 of charge sheet on the

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premise that the allegations against the applicant have not been proved during the course of investigation, therefore the culpability of the applicant cannot be determined which requires evidence to be recorded by the learned Trial Court. He further added that at this juncture the applicant is entitled to be released on bail as his case requires further enquiry. He next contended that so far as injury attributed to the applicant is concerned which was not sufficient to cause death of the deceased. Per learned Counsel, the complainant has admitted that there is old dispute between both the parties on certain issues, therefore the false implication of the applicant cannot be ruled out, which requires further inquiry into the guilt of the applicant. Per learned Counsel the Investigating Officer has examined independent witnesses who have categorically stated that the allegations against the applicant are not correct and even the Inquiry Officer has also opined that according to his secret and spot inquiry allegations against the applicant have not been proved. He further added that FIR has been lodged with delay of 10 hours, which has not been explained. He next contended that co-accused Adab Hussain and Abdul Nabi have been released on bail by the order dated 02.02.2017 passed by the learned Sessions Judge Kashmore @ Kandhkot in Cr.B.A.No.16/2017. He next added that though role in the commission of offence is attributed to the present applicant but initially the medical certificate issued by the Medical Officer explicitly shows that the nature of injury attributed to the applicant is Ghayr-jaiyah Mutalahimah (337-Fiii) which carries three years punishment and the same offence does not fall within the prohibitory clause of S-497(i) Cr.PC. He next asserted that the injury attributed to the applicant is on non vital part of the body, therefore the applicant at this stage



cannot be saddled with the criminal liability under section 302-PPC. He further argued that during the course of investigation nothing incriminating material was recovered from the possession of applicant.

4. Mr. Muhammad Murad Chachar Learned counsel for the complainant has argued that the applicant has been charged with direct role of firing upon deceased Bilawal which carries penalty of death or life imprisonment, therefore he is not entitled for the concession of bail at this stage. He next contended that the police had let-off the present applicant on certain surmises and conjectures without collecting the proper evidence which report submitted u/s 173 Cr.P.C was rejected by the learned Magistrate vide order dated 28.01.2017, therefore no defense plea is to be considered by this Court at the bail stage. He next argued that the grounds taken by the Learned counsel for the accused requires deeper appreciation of the evidence which cannot be considered at the bail stage, therefore applicant is not entitled for concession of bail. He next argued that the applicant has been nominated by the complainant and PWs who have fully supported the version of the prosecution, therefore there is no question of false implication of applicant. He next contended that ocular testimony coupled with medical evidence fully supported the prosecution case. He next argued that there is no ostensibility of any enmity of prosecution witnesses with the applicant to falsely implicate him in the present nature of crime, therefore he is not entitled for the concession of bail. In support of his contention he relied upon the case Sohail Waqar @ Sohaila Vs. The State (2017 SCMR 325).

5. Learned Mr. Aijaz Mustafa Samtio, Learned DDPP for the state has adopted the arguments of learned counsel for the complainant.

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6. I have heard the learned counsel for the applicant, learned counsel for the complainant and Learned DDPP for the State. Perused the material available on record and case law cited at the bar.

7. I am conscious of the fact that while deciding a bail application this court has to consider the allegations made in the FIR, statements recorded under Section 161 Cr.P.C, other incriminating material against accused, nature and gravity of charge and pleas raised by the accused. Perusal of record shows that apparently, applicant has been charged to have actively participated in the alleged crime by firing upon the deceased Bilawal with pistol on his right forearm. Post Mortem Report supports the prosecution case in which doctor has opined that all the injuries are ante-mortem in nature and sufficient to cause death in ordinary course of nature. The witnesses have fully supported the case of Complainant who did not seem to have any ostensible reason to falsely implicate the Applicant in a murder case of deceased Bilawal. Case of Applicant is also hit by prohibition contained in section 497(i) Cr.P.C. So far as the plea taken by the learned counsel that Applicant was initially let off and his name was placed in Column No.2 of the final report submitted under section 173 Cr.PC is concerned, suffice it to say that such report was not approved by the concerned Judicial Magistrate vide order dated 28.01.2017, Therefore I am of the tentative view that at this juncture such version of the applicant cannot be considered as there are no reasonable grounds to believe that the Applicant is not involved in the alleged offence.

8. Reverting to the plea of enmity taken by learned counsel for the Applicant, suffice it to say that it cuts both way, it may be a cause for the crime as well implication. At bail stage, no benefit can be

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extended to the Applicant on such plea. I am clear in my mind on the point that a factual controversy which cannot be evaluated at the bail stage in the light of well settled principle of law that tentative assessment of the record is to be made at bail stage. The offence fall under section 302, 148, 149 P.P.C which is punishable to death or life imprisonment. So far as the ground taken by the learned counsel for the applicant that co-accused Adab Hussain and Abdul Nabi have been granted bail by the learned trial court, which requires further inquiry is concerned, I am of the humble view that impugned order of learned Sessions Judge, Kashmore @ Kandhkot dated 14.02.2017, declining bail to the Applicant is well reasoned. Prima facie sufficient incriminating material is available on record connecting the Applicant with the commission of crime, therefore at this juncture, he is not entitled to grant of bail on the ground of further inquiry.

9. In view of the above facts and circumstances, I am of the opinion that the Applicant has not made out a case for grant of bail at this stage. Accordingly, the instant bail application is dismissed. However, learned Trial Court is directed to record evidence of material witnesses within a period of four months where-after the applicant will be at liberty to move fresh bail application before learned Trial Court, on fresh ground, if he is advised so.

10. The above findings are tentative in nature which shall not prejudice the case of either party at the trial.

11. These are the reasons of short order dated 12.6.2017.


16/06/2017
JUDGE

Dated: 16.06.2017