

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.Bail.Appl.No.S- 88 of 2010

DATE **ORDER WITH SIGNATURE OF JUDGE**

For hearing.

Date of hearing 09-04-2010.

Date of order 09.4.2010.

Mr. Amjad Ali Sahito, Advocate for applicant.

Syed Meeral Shah, D.P.G.

Mr. Muhammad Issa Behan, Advocate for complainant.

=

AQEEL AHMED ABBASI, J- On being aggrieved and dis-satisfied by the orders passed by learned VIth Additional Sessions Judge, Hyderabad on 8.9.2009 and 29.9.2009, respectively, whereby the bail plea of the applicant was declined, the applicant has filed the instant bail application under section 497 Cr.P.C. .

The learned counsel has read out the contents of FIR available at page 15 (true English translation at page 17) to show that neither the applicant has been nominated in FIR nor any role has been assigned to him. It is further contended that even on the basis of FIR there were only four persons stated to have committed the alleged offence U/s 17(3) Offence against property (Enforcement of Hudood) Ordinance, 1979 and the police has challaned five persons including the present applicant. Learned counsel further states that other accused persons have been arrested in some other Crime U/s 13(D) of the Arms Ordinance, and as per prosecution story, on the statement of one co-accused recorded U/s 161 Cr.P.C, the present applicant has been implicated in the instant crime. Learned counsel further stated that no identification parade has been made in respect of the applicant nor any recovery or any incriminating evidence connecting the present applicant with the alleged crime has been produced by the prosecution. It is contended that applicant has falsely been implicated and is entitled to grant of concession of bail by this Court. In this regard, the learned counsel has placed reliance on the judgment of Farman Ali Vs. The State reported in 1997 SCMR 971 on the point of examining the affect of no identification parade. He has also placed reliance on the case of Muhammad Rafique Vs. The State, reported in 1997 SCMR

412 on the point of examining the affect where the accused is not nominated in the FIR.

On the other hand, the learned DPG as well as counsel for the complainant though did not controvert the submissions of learned counsel for the applicant, however argued that since the matter has been challaned and proceeding before the trial Court, the applicant may not be admitted to bail at this stage.

I have heard learned counsel for the parties, perused the record and examined the case law relied upon by learned counsel for applicant.

On tentative assessment of the evidence available on record it appears that neither the applicant has been nominated in the F.I.R. nor any direct role has been assigned connecting the present applicant with the alleged crime. It is further observed in view of the contents of F.I.R., there were four persons who allegedly committed the instant crime whereas in Challan five persons have been shown as arrested including the present applicant. It is also observed that present applicant has only been implicated in the instant case on the basis of statement of co-accused recorded under section 161 Cr.P.C. and as per article 39 of Qanun-e-Shahadat Ordinance and in view of judgments of Superior Courts, the same cannot be taken into consideration for the purpose of considering the bail applications.

In view of hereinabove facts and on the tentative assessment of the evidence, the applicant vide short order dated 09.4.2010, was admitted to bail subject to furnishing surety in the sum of Rs.100,000/- (Rupees One Lac) with P.R. Bond in the like amount to the satisfaction of the trial Court with direction that if the applicant misuses the concession of bail, the learned trial Court shall be at liberty to initiate proceedings against the applicant for the purpose of considering his bail. These are the reasons for such short order.

Needless to observe that observations made hereinabove are tentative in nature and the trial Court shall not be prejudiced by any such observation and shall decide the case as per law and on the basis of evidence available on record.

The bail application stands disposed of in the above terms.

Dt:16.4.2010.

JUDGE.