

**ORDER-SHEET**

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

**1<sup>st</sup> Criminal Bail Application No. S-275 of 2019**

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Date of hearing: 17.06.2019.

Date of Order: 28.06.2019.

Mr. Ashiq Ali Jatoi, Advocate for Applicant.

Mr. Muhammad Noonari, Deputy Prosecutor General.

~~~~

**Muhammad Faisal Kamal Alam, J.:** Through this application, applicant Roshan Cholyani son of Singho Cholyani has sought for his release on bail after arrest in Crime No.110/2012, registered at Police Station Warrah, for offences punishable under Sections 302, 109, 337H(ii), 148, 149 P.P.C after his similar prayer was declined by learned Additional Sessions Judge-II, Kamber, vide Order dated 30.04.2019.

2. The facts of the case of prosecution are that on 03.11.2012 at about 1500 hours, complainant Imam Ali lodged F.I.R. at Police Station Warrah, regarding dispute with Shafqat and Imdad Cholyani over land and water course; the complainant, his son Deedar, nephews Ghulam Asghar and Nephew's son Saifullah were available at the Photostat and computer shop being run by his nephews; when at about 02:30 p.m. they saw seven armed persons came towards them, out of them they identified five persons, namely, Khalid Hussain, Bhale Dino alias Bhallo, Awais, Fayyaz and Hassan Ali all by caste Cholyani armed with T.T Pistols alongwith two other unidentified persons

armed with Kalashnikovs (K.K.). The men armed with pistols opened fire at the son of Complainant, namely, Deedar and his nephew's son Saifullah in order to commit their murder, which hit them, resultantly they fell down and when complainant side raised hue and cry, the armed persons fled away while firing in the air; blood was oozing from the injured persons, who succumbed to the injuries while shifting to the hospital. The name of the accused was not transpired in the F.I.R, but his name was introduced by the P.Ws in their statements under section 164 Cr.P.C. and he was declared as proclaimed offender; the accused was arrested on 06.03.2019 by the police.

3. Learned counsel for the applicant has contended that; the applicant is innocent and has been falsely implicated by the complainant party due to previous enmity; that the other co-accused Khair Muhammad, whose name was also not mentioned in the F.I.R. like that of the present accused, has already been granted bail by the learned Trial Court; that neither the name of the applicant is mentioned in the F.I.R nor any specific role has been assigned to the present applicant/accused. The learned counsel prays for grant of bail under the rule of consistency.

4. Learned D.P.G. vehemently opposed the grant of bail in favor of applicant on the grounds that; the name of the present applicant has been introduced by the P.Ws in their statements recorded under section 164 Cr.P.C before the learned Civil Judge and Judicial Magistrate-I Warrak; the applicant / accused was having K.K at the

time of incident and made aerial firing at the scene of offence; further the present applicant remained fugitive from law for about five years, hence he is not entitled for the concession of bail.

5. Heard arguments of the learned counsel for the applicant, learned D.P.G and considered the material available on record.

6. From the perusal of record it transpires that; in the FIR, the present Applicant / Accused has not been nominated. The prosecution witness (Ghulam Asghar) has mentioned the name of present Applicant / Accused in his Statement under Section 164 Cr.P.C, that too on 10.12.2012, that is, after more than one month of lodging of F.I.R. The role assigned to the present Applicant / Accused in the said statement is that he and co-accused Khair Muhammad, whose name was also not mentioned in F.I.R, were armed with Kalashnikovs and standing outside the shop, that is, the place of incident and they both resorted to aerial firing and then ran away; no specific role of firing has been assigned to the present Applicant / Accused causing the death of above named persons. Under the similar circumstances the above named co-accused Khair Muhammad has already been admitted to bail by the learned Trial Court vide order dated 18.04.2014. Hence rule of consistency is also applicable to the case of the present applicant/accused. It is also note worthy that the parties under the dispute belong to same community and are known to each other, *inter alia*, due to previous hostility, as also mentioned in the F.I.R, but despite that, complainant party had not mentioned the name of the

present applicant/accused either in the F.I.R nor statements of P.Ws recorded under section 161 Cr.P.C., but his (present applicant) name was first time surfaced in the Statement under section 164 Cr.P.C. as mentioned hereinabove, which creates doubt that the name of the accused has been mentioned after due deliberation and consultation amongst the complainant party. In these circumstances, I am of the considered view that guilt of the applicant in this crime can only be proved after further enquiry. It is also note worthy to mention here that mere abscondence of an accused cannot be made ground to reject his bail application, as observed by the learned Trial Court in the afore-referred order dated 30.04.2019, if an accused is otherwise entitled to the concession of bail, considering the principle laid down in a number of judicial pronouncement. Interestingly, the order of the learned Trial Court, refusing the bail also observes that the present applicant/accused is a Government School Teacher and was drawing his salary in all those years. This aspect also *prima-facie* shows that the present applicant/accused in all these years was performing his duty and drawing his salaries in a routine manner.

7. In view of the above, I find no valid reason to decline the concession of bail to the applicant, therefore, instant bail application is allowed and the applicant Roshan Cholyani is admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and P.R Bond in the like amount to the satisfaction of the learned Trial Court.

8. If the Applicant/accused misuses the concession of bail then the learned Trial Court may take strict action against him in accordance with law; with a further clarification that the learned Trial Court will not be influenced by any of the observations contained hereinabove and decide the case on merits and after appreciation of the evidence.

**Judge**

*Manzoor*