

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

1- Crl: Bail Application No.S- 397/2019
Amanullah and others v. The State

2- Crl: Bail Application No.S- 444/2019
Mushtaque Ali Phulpoto v. The State

For hearing of bail application

18.10.2019

M/s Irshad Hussain Dharejo and Irfan Ahmed Baloch Advocate for
the applicants in both the bail applications
Mr. Aftab Ahmed Shar, Additional PG for the State

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AFTAB AHMED GORAR, J: The above listed two bail applications; one for pre-arrest and another for post-arrest bail are being disposed of by this single order as they arise out of same case registered as FIR No.103/2019 at Police Station 'B' Section Khairpur, for offences punishable under Sections 302, 311, 201, 120-B and 337-J PPC.

2. Precisely stated facts of the case are that on 29.5.2019 complainant ASI Muhammad Juman Khero lodged the FIR at Police Station 'B' Section Khairpur on behalf of State that he received spy information that one Attaullah Phulpoto has declared his wife Mst. Naila as '*Kari*' and has ousted her and she is residing with her father Riaz Hussain and such *Jirga* has been conducted under the supervision of her father Riaz Hussain and others, they are arranging a plan to forcibly administer poison to Mst. Naila so that her death would be declared as suicide, hence he conveyed such information to higher authorities. In response to such information other police parties also arrived at Garhi Bridge and they altogether went to the pointed place, when reached outside the house of Riaz Hussain, there heard cries of a woman, as such the police party abruptly alighted from vehicles and entered into the house of Riaz Hussain, it was 2200 hours. It is further alleged that the accused persons were identified to be Aijaz Ali, (2) Riaz Hussain, (3) Mushtaque Ali, with Pistols, (4) Amanullah, (5) Zahid and

(6) Ashfaq, who on seeing the police party climbed over the walls and escaped towards southern side. Thereafter the complainant saw that a woman was trembling, on enquiry she disclosed her name as Mst. Naila and further narrated that accused Aijaz Ali, Riaz Hussain, Ashfaq, Mushtaque Ali, Zahid and Amanullah have maltreated and forcibly administered poison to her on the false allegation of *Karap* then she died there having injuries. The complainant party saw that one bottle of poison was lying beside the Cot of Mst. Naila, the complainant party with the help of Inspector Zulekhan Ansari noted injuries on her right hand and shoulder. The dead-body was brought at hospital and after postmortem, it was handed over to Mst. Akhtiar Phulpoto for interment, the legal-heirs were asked to lodge the FIR but no one turned up, hence such FIR was registered on behalf of the State.

3. Learned counsel for the applicants/accused contended that the story as setout in the FIR is false one; that the applicants/accused have been falsely implicated by the police as the deceased Mst. Naila has committed suicide and the demand of the police was that the applicants /accused should grease their palms and on refusal they cooked up a false story and registered the present FIR on behalf of the State; that there is delay of one day in lodgment of the FIR without plausible explanation; that as per version of the complainant no one has seen the accused persons while forcibly administering poison to the deceased Mst. Naila; that it is very astonishing that the accused on seeing the police escaped away by climbing over the walls, whereas, the police did not take any action for capturing them at the spot, therefore, it suggests that the police has not arrived at place of incident at the time when allegedly the deceased was being done to death; that the final post-mortem report issued by the Women Medical Officer reveals that no poison has been detected from the viscera of the deceased, whereas, the cause of death has been declared as unascertained / undetermined; that the co-accused namely Amanullah, Zahid Hussain and Ashfaq who have been assigned the identical role have been let off by the being innocent; that the co-accused Akhtiar Ahmed has been

granted post-arrest bail by the Court of learned 4th Additional Sessions Judge Khairpur; that the case has been challaned and is pending trial, the applicants were no longer required for the purpose of investigation. He lastly prayed that under the above stated circumstances, the applicants/accused have made-out a case for grant of bail, therefore, the interim pre-arrest bail granted to the applicants/accused Amanullah, Zahid Hussain and Ashfaq Ahmed may be confirmed on same terms and conditions, while the applicant/accused Mushtaque Ali may be granted post-arrest bail, as this case required further enquiry.

4. Learned Additional P.G representing the State could not controvert the above contentions of the Advocate for the applicants/accused yet he opposed the grant of bail to all the applicants/accused.

5. I have given due consideration to the respective contentions of the learned Counsel. The perusal of the record reveals that there is delay of one day in lodgment of the FIR, whereas, there seems no eye-witness of the alleged incident, mere words of the complainant who is a police official cannot be believed as gospel truth at this stage. As per complainant, when they reached outside the house of co-accused Riaz Hussain they heard cries of a woman, they immediately intruded into the house and on seeing them, all the accused persons escaped away from the place of incident, whereas, the raiding party comprised a good number of Police personnel yet none of the accused persons was captured at the spot, which indeed reflected upon the veracity of the prosecution case. Furthermore, the incident of administering poison to deceased Mst. Naila and maltreated by the accused particular her father Riaz Hussain in presence of the other family members, but that could not be readily believed that he would do such an act in his house in presence of other family members. In any case, this aspect would be thrashed out by the trial Court and bearing in mind all the said factors and that the applicants belonged to one and the same family and the case having been challaned, they were no longer

required for investigation, in my view, a case for grant of bail is made-out. Furthermore, the ocular account furnished by the complainant in the FIR is in conflict with the medical report. The co-accused namely Akhtiar Ahmed has also been granted bail by the Court of learned 4th Additional Sessions Judge Khairpur. Accordingly, interim pre-arrest bail granted to applicants Amanullah, Zahid Hussain and Ashfaq Ahmed on 19.07.2019 is confirmed on the same terms and conditions while applicant/accused Mushtaque Ali is directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.100000/- (One hundred thousand) and PR bond in the equal amount to the satisfaction of the trial Court. The observations made herein above are tentative in nature and would not affect the case of either party at trial.

6. Instant Criminal Bail Applications are disposed of in above terms.

Judge

ARBROHI