

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail. Appln. No.S- 303 of 2020

For hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application

(Statement dated 22.09.2020 filed)

29.09.2020

Syed Jaffer Ali Shah Advocate for the Applicant
Mian Mumtaz Rabbani Advocate a/w complainant
Mr. Zulfiqar Ali Jatui, Additional PG for the State

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Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicant/accused Abdul Hameed alias Badar (Badaruddin alias Abdul Hameed) Tunio, seeks post-arrest bail in Crime No.28 of 2020 registered at Police Station, Baberloi, District Khairpur, for offences punishable under Sections 302 and 34 PPC.

2. Precisely the facts of the prosecution case as per first information report are that on 11.03.2020 at 1800 hours, complainant Mst. Shahnaz Tunio lodged the FIR regarding the incidence which took place on 06.03.2020 at 0020 hours, stating therein that sometimes ago one Allahyar was murdered and such allegation was leveled against his *brother-in-law* Pervez, hence their rival namely Deedar and others used to say that they will take revenge of the said murder. On 05.03.2020, after having dinner, she

along with her old mother Begum Khatoon aged about 70/75 years and *maternal-nephew* Munawar Ali S/o Ali Sher and sister Mst. Rubina wife of Pervez, after closing the door slept in the house, where electric bulbs were glowing, all of a sudden they woke-up on some noise on 06.03.2020 at about 0030 hours (midnight) on the electric bulb light they saw and identified accused each one namely Deedar, Awais, Badaruddin alias Abdul Hameed, Hizbullah, all by caste Tunio, duly armed with Repeaters were available in the house, they issued threats to the complainant party not to cry, as today they have to avenge the murder of Allahyar, hence on saying so, all the accused persons with intention of murder made direct fires from their Repeaters upon Mst. Begum Khatoon, resultantly, she cried and fell-down on the ground, then the complainant party raised cries, which attracted the neighbourers, who rushed to the place of incident, hence on seeing them coming, all accused persons escaped away by raising slogans. Thereafter, they (complainant party) went over Mst. Begum Khatoon and saw that she had a firearm injury on her head, she was died and then such information was conveyed to Police Station Baberloi, and in response to such call, ASI Nazir Ahmed Jamro arrived there, who after completing formalities shifted the dead-body to RHC Garhi Mori and after interment the dead body was handed over to complainant for funeral purposes, hence the FIR was lodged.

3. It is contended by learned counsel for the applicant/accused that applicant/accused being innocent has been involved in this case falsely by the complainant party; that the general role of firing upon the deceased Mst. Begum Khatoon is attributed to the present applicant/accused though there was indiscriminate firing, but as per postmortem there is only one firearm injury sustained by the deceased; that there is delay of about 05 days in lodgment of the FIR, for which no plausible explanation has been furnished by the complainant; that as per FIR there is enmity between the parties, as prior to this one Allahyar was murdered from the applicant side and such allegation was leveled against Pervez, the *brother-in-law* of present complainant, therefore, in existence of enmity the false implication of the applicant/accused cannot be ruled-out; that this a two version case, first as set-out in the FIR, whereas, second one in the application u/s 22-A and B Cr. P.C filed by the present complainant before the learned Ex-Officio Justice of Peace Khairpur; that during investigation, the present applicant was found innocent and his name was placed in column No.2; that no recovery has been affected from the possession of present applicant/accused; that the case has been challaned and the applicant/accused is no more required for further inquiry, hence he is entitled for grant of bail.

4. Learned counsel for the complainant has opposed for grant of bail to the applicant/accused by contending that the

applicant/accused along with co-accused persons duly armed with repeaters entered into the house of complainant and made indiscriminate firing, as such he has actively participated in commission of offence resultantly an old lady of 70/75 years has lost her life, therefore, the applicant/accused is not entitled for grant of bail.

5. Learned Additional PG for the State raised no objection for grant of bail to the applicant/accused by contending that the general role of firing is attributed to the applicant, whereas, as per version of the complainant there was indiscriminate firing by the applicant/accused and co-accused, but as per post-mortem report the deceased had sustained only one injury, therefore, it is yet to be determined at the trial after recording evidence, that who is responsible for causing the single injury to the deceased.

6. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant and learned Additional PG for the State and perused the record. As per FIR, the general role of firing is attributed to the applicant/accused in the commission of offence, whereas, the identity of the accused at the time of incident on the electric bulb is always termed as weak source of identification; that there is delay of 05 days in lodgment of the FIR, for which no plausible explanation has been furnished by the complainant. There

is no recovery of crime weapon affected from the present applicant/accused and there exists previous enmity between the complainant and the applicant/accused as prior to this one Allahyar was murdered and such allegation was leveled against Pervez who is brother-in-law of the present complainant. The case has been challaned and the applicant/accused is not required for further investigation. In these circumstances, the learned counsel for the applicant/accused has rightly contended that the applicant/accused is entitled to grant of bail on point of further enquiry, as envisaged under Section (2) of Section 497 Cr.P.C.

7. In view of above, the instant bail application is allowed, the applicant is admitted to bail subject to his furnishing surety in sum of ***Rs.300000/- (Three hundred thousand)*** and PR bond in the like amount to the satisfaction of learned trial Court. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

Judge

ARBROHI