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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
1st CrI. Bail Appln. No.S-93 of 2021.

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Zaffar Ali Malghani, advocate for the applicants.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of Hearing : 05.04.2021.

Date of decision : 9.04.2021.

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ORDER

Omar Sial, J.- Ilamdin Brohi and Mullan Muhib Brohi have sought post arrest bail in Crime No.20 of 2020 registered under sections 302, 338-C and 34, PPC at the Dodapur Police Station. Earlier, their application seeking bail was dismissed by the learned Sessions Judge, Jacobabad on 21-10-2020.

2. The background to the case is that the aforementioned F.I.R. was lodged on 22-9-2020 by Damsaq Brohi reporting an incident that had occurred on 19-9-2020. He reported that his sister Shahzadi was married to the applicant Ilamdin and was 6 months pregnant. On 19-9-2020 he along with his uncle Meer Khan and cousin Deedar Ali went to Ilamdin's house. Damsaq asked Ilamdin for permission to take Shahzadi for a visit back to her home, which request angered Ilamdin and he along with Mumtaz, Mullan Muhib and Mian Bux started to beat Shahzadi with sticks. The accused then ran away and Shahzadi subsequently expired on 20-9-2020.

3. I have heard the learned counsel for the applicant as well as the learned DPG. No one effected an appearance on behalf of the complainant. My observations are as follows.

4. I find the story as narrated in the F.I.R. rather odd. If Damsaq had asked for permission of Ilamdin to take Shahzadi home for a visit, there

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appears to be very little reason as to why Ilamdin and others would start beating Shahzadi even if an altercation occurred between the complainant party and the accused party, it appears unusual that the accused would start beating Shahzadi and not lay a finger on any member of the complainant party. What I find rather unnatural is that none of the 3 i.e. Damsaq, Meer Khan and Deedar Ali intervened to save Shahzadi from the alleged beating. At this stage, it appears unusual that the 3 grown men would simply stand and watch as Shahzadi would be beaten to death. The assailants then run away from their own home and nobody either witnesses the incident or comes to the house in the immediate aftermath of the incident. The learned DPG confirms that the section 161 statements of only 3 witnesses have been recorded i.e. the complainant, his uncle and his cousin.

5. The 3 days delay in lodging the F.I.R. or even a complaint about the incident with the police appears to be odd also. If Damsaq's sister would have been killed in the manner he said she was, it would have been reasonable to assume at this stage that the police would be approached at the first instance so that the culprits could be apprehended. While the impact of the delay in lodging the F.I.R. will have to be determined by the learned trial Court, at this preliminary stage malafide on the part of the complainant in roping in the accused for the offence cannot be conclusively ruled out.

6. The postmortem report notes that only an external inspection of the body was possible as the complainant did not permit the doctor to perform a proper postmortem. While the learned trial judge has observed that the deceased was pregnant when she died, there appears to be no evidence on record to establish the same. The noting in the postmortem report also shows that the doctor was told that she was pregnant. The doctor thus gave no finding on this issue. I am also unable to understand at this stage as to how the doctor reached the conclusion that the death was due to hemorrhage when her report shows no external blood flow and she was unable to determine whether there was internal bleeding that had caused the hemorrhage. This aspect will have to be clarified after the doctor has been examined at trial. The postmortem was conducted on 20-9-2020, but the report bears an issuance date of 1-10-2020. The medical report upon a tentative

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assessment is not very convincing and evidence is required to be led before the cause of death can be proved. There is nothing on record that has been shown to me which would establish that Shahzadi died at the Chandka Hospital in Larkana. There is no death certificate issued by the Chandka Hospital that could *prima facie* show the cause of death. Further, there is no explanation as to why the dead body of Shahzadi was brought from Larkana to Jacobabad merely for a postmortem when the requisite facility was available in Larkana.

7. In view of the above, the nexus of the applicants with the crime requires further inquiry in terms of the section 497(2) Cr.P.C. The applicants are therefore admitted to bail pending trial subject to their furnishing solvent sureties in the sum of Rs.100,000/- each and P.R. bonds in the like amount to the satisfaction of the learned trial Court.

 9/4/21
JUDGE

Qazi Tahir PA*