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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.  
Crl. Bail Appln. No S-280 of 2021.

Date	Order with signature of Hon'ble Judge
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1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Rafique Ahmed K. Abro, advocate for the applicant.

Mr. Abdul Ghaffar Kalhoro, Assistant Prosecutor General.

Mr. Hamid Ali Chandio, advocate for the complainant.

Date of Hearing : 06.10.2021.

Date of decision : 15.10.2021.

ORDER

Omar Sial, J.- Muhammad Jhathiyal has sought post arrest bail in Crime No.135 of 2020 registered under sections 302, 504 and 34, P.P.C at the Mehar police station in Dadu District. Earlier, his bail application was dismissed on 31.05.2021 by the learned 1<sup>st</sup> Additional Sessions Judge, Mehar.

2. The aforementioned F.I.R. in this case was lodged by Muhammad Hassan Jhathiyal on 13.06.2020. He recorded that one Farooq had forbidden his cousin Saddam from lurking in front of his house on which he (Muhammad Hassan Jhathiyal) had told Farooq that the street does not belong to you and therefore, we will also use it. This had annoyed Farooq. At 1.30. a.m. on 13.06.2020, Saddam's shouting and shrieking was heard from towards the house of Farooq. Upon hearing the noise, the complainant, his uncle Muhammad Buksh and cousin Siraj came out of their house and saw that Farooq along with one Naeem and the applicant were beating and abusing Saddam and dragging him inside the house of Farooq. They then locked the door from inside. The complainant party heard Saddam's cries for help from inside Farooq's house. They tried to break the door but failed to do so and therefore climbed over the wall and entered the house. They saw Farooq holding a wooden piece of a cot; Naeem with an iron rod and the applicant with a wooden piece of a cot; while Saddam was lying unconscious on the ground with blood flowing from his nose and ears. The accused left the scene. The complainant party saw that Saddam expired.



3. Learned counsel for the applicant has argued that the FIR is delayed by 16 hours; witness statements under section 161 Cr.P.C. were recorded after one day; there are no eye-witnesses; the wooden piece of cot recovered at the pointation of the applicant was after eight days of his arrest; that the initial report received by the police shows that the complainant had told the police that Farooq Jhathiyal and others have committed the murder of Saddam but the applicant was not named specifically; memo of inspection of place of incident was prepared one day later and that the post-mortem report shows the time between death and post-mortem is one and a half hours and as the post-mortem was done at 4.00. a.m., the death would have occurred at 2.30. a.m. and hence, it does not reconcile with the complainant's version that it was 1.30. a.m. when they heard the shrieks of Saddam. Lastly, he has argued that this is a case of "last seen" evidence and that the applicant is entitled to bail on this ground alone.

4. To the contrary, the learned Assistant Prosecutor General has argued that the story narrated in the FIR sounds truthful; that the delay in the FIR has been explained as it was only after Saddam's burial that it was registered; that the police was informed immediately about the incident and that even in that information, apart from Farooq Jhathiyal it was recorded that there were other people with him that had killed Saddam; the witness statements have been recorded with due promptitude after the registration of the F.I.R.; the contradiction in timing pointed out by the counsel for the applicant is immaterial.

5. I have heard the learned counsel for the applicant and the complainant as well the learned Assistant Prosecutor General and with their able assistance, I have also perused the record. My observations and findings are as follows.

6. The impact of the 16 hour delay in the lodging of the FIR will have to be determined at trial after evidence is led. Prima facie, it appears that delay occurred due to Saddam being taken to the hospital, police completing its initial formalities, post-mortem being conducted, the body being taken back to his home and subsequently in the burial ceremony. Upon a tentative assessment, the delay is reasonably explained. It is pertinent to point out that the basic information of the incident to the police was given with reasonable promptitude. Similarly, the reasons for



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delay in recording the witness statements and its impact on the prosecution case can only be determined after evidence is led at trial. However, upon a tentative assessment, it appears that even the recording of the statements has not been unreasonably delayed. The argument of the learned counsel for the applicant regarding reconciliation of time between the death and post-mortem as recorded in the post-mortem report compared to the time given by the complainant is at best a minor and immaterial contradiction. The complainant has himself in the FIR recorded that once they had climbed over the wall they had seen Saddam lying unconscious with the accused holding various instruments in their hands with which they had beaten him. In the circumstances narrated by the complainant, obviously there would be no eye-witnesses. However, the facts in themselves reveal that *prima facie* there is strong circumstantial evidence to indicate that with nobody else present in the house of Farooq (which venue has not been denied by the learned counsel for the applicant) except the three accused, Saddam's murder could have been committed by them. Of course, a conclusive decision in this regard will have to be taken by the learned trial court after the evidence is led.

7. As regards the learned counsel's argument that this is a case of "last seen" evidence and hence, benefit of doubt should be given to the applicant, in my view, keeping in mind the *prima facie* strong circumstantial evidence, it is an issue that requires a deeper appreciation of evidence and to be decided at trial.

8. In view of the above, in my opinion, the applicant at this preliminary stage does have a case to answer and that the learned counsel has failed to make out a case for grant of post-arrest bail. The application, therefore, is dismissed.

  
15/10/21  
JUDGE

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