

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Appln: No.S-860 of 2015.

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing.

06.01.2017.

Mr. Ayaz Ali Gopang, Advocate for the applicant.
Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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OMAR SIAL,J- This post arrest bail application has been filed by accused/applicant Wazeer Lashari s/o Ali Hasan Lashari who has been accused of offences u/s 302, 34 PPC in crime number 16 of 2015 registered at the P.S. 60 Miles, District Nawabshah.

The brief facts of the prosecution case are that on 25-4-2015 accused/applicant asked Ameer Ali (the complainant), Rehmat Ali (the deceased) and another individual named Soonharo to accompany him to his Otak for a conversation. He then left the Otak on the pretext of some work asking Ameer Ali, Rehmat Ali and Soonharo to wait there. At about 0040 hours the accused/applicant returned along with his father Ali Hassan, his uncle Muhammad Nawaz and another individual Abdul Aziz. The accused/applicant accused Rehmat Ali of having an illicit relationship with his wife Roshana subsequent to which the four individuals on gun point forcefully took him to the house of Ali Hassan where Ali Hassan and Muhammad Nawaz delivered axe blows on the rear of Rehmat Ali's head. Rehmat Ali subsequently died and the accused ran away. A case was registered against all four accused. Ali Hassan and Wazeer Ali are in jail whereas Muhammad Nawaz and Abdul Aziz are absconding. Wazeer Ali applied for a post arrest bail before the learned 2nd Additional Sessions Judge, Shaheed Benazirabad who dismissed the same vide his order of 11-7-2015.

I have heard the learned counsel for the accused/applicant and the learned APG. The complainant remained absent despite several notices being sent to him. I will address each of the argument raised by the learned counsel for the accused/applicant in my observations below:

1. The learned counsel for the accused/applicant has argued that the FIR is delayed by fifteen hours which creates doubt. It is correct that the murder is said to have occurred at about 0040 hours on 25-4-2015 and the FIR has been registered at 1530 hours on the same date. The reason given by the prosecution for this delay is that the information of the murder was received

by them at 0100 hours subsequent to which the police had to reach the spot and make the preliminary inquiry. The inquest report is made at 0230 hours. The body was sent for post mortem and burial, after which the FIR was registered. At this stage the delay seems to be plausible.

2. The learned counsel for the accused/applicant in support of the grant of bail has argued that the investigation commenced prior to the registration of the FIR. For this argument he has relied on the inquest report, the fact that the body was sent for post mortem when the police arrived and that the police made a memo of the inspection of the dead body on the site as soon as it reached. It would be the duty of the police to prepare such mushirnama on the spot. The learned counsel has mistakenly taken the date and time when the police saw the body as the date of the inquest report, whereas the post mortem report also shows that it is dated 27-4-2015. The argument of the learned counsel is thus without force.
3. The learned counsel for the accused/applicant has argued that the mushirnama does not show the name of the accused/applicant. He is mistaken in treating the roznamcha entry as a mushirnama. The said roznamcha entry does indeed only reflect that the police is leaving the police station on the information that a murder has occurred and does not include the name of the accused/applicant. This ground would not be sufficient for the grant of bail to the accused/applicant.
4. The learned counsel for the accused/applicant has argued that no overt role has been ascribed to the accused/applicant in the FIR. It is correct that while the accused/applicant has been nominated in the FIR, it has not been alleged that the accused/applicant has hit the deceased with an axe. The role of hitting has been assigned to the other two accused, namely, Ali Hassan and Muhammad Nawaz. Be that as it may, the accused/applicant is accused of luring the deceased to his Otaq, bringing the other accused to his Otaq, playing a role in forcefully taking him away on gun point and then being on the scene as the deceased was axed to death. Prima facie he seems to share a common intention, which fact can conclusively be decided after evidence is led.
5. There is a specific motive attributed to the accused/applicant i.e. the deceased having an illicit relationship with his wife. There are two eye witnesses to this murder whose testimony cannot be brushed aside at this bail stage only on the ground that they are related to the deceased.
6. According to the learned APG, the axe used in the murder has been recovered on the pointation of the accused. I have however not taken this fact into account for the purpose of this bail application. No evidence has been given by the learned APG to this effect. In any case, an extra judicial confession together with the fact that the accused/applicant is not alleged to be in possession of an axe at the time of the murder would have little value in refusing bail to him.

7. The inquest report and the post-mortem report are both in line with the ocular testimony. The accused/applicant is accused of an offence u/s 302 PPC carrying a capital sentence and hence falling within the prohibitory clause of section 497 Cr.P.C.

In view of the above, the accused/applicant has failed to make out a case to be enlarged on bail and hence his bail application is dismissed. The learned trial court is directed that if the absconders are not arrested within reasonable time, the trial of the arrested accused should be separated and the trial concluded within four months.

JUDGE.