

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

Cr. B.A. No.S-828 of 2016.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

29.06.2017.

Mr. Farhad Ali Abro, Advocate for the applicant.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

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Through instant bail application, the present applicants seek post-arrest bail in Crime No.36/2016, registered at Police Station Mangli for offence under sections 302, 34 PPC.

2. Prosecution case as per FIR is that on 17.04.2016 SIP Riaz Ahmed Bhutto, SHO P.S Mangli with staff was in field for arresting proclaimed offenders, when he was informed by ASI Atta Mohiyuddin duty officer at P.S that one Muhammad Aslam (applicant/accused) had informed him about murder of his sister Labiya aged about 17/18 years at 5.00 AM in village LAIQUE JAMALI at the hands of his cousin Azizullah (applicant/accused) accidentally by way of fire shot. ASI Atta Mohiyuddin reached at the wardat and through ambulance brought the body to Civil Hospital. Complainant along with staff also reached at the hospital. After post-mortem examination the dead body was handed over to Muhammad Aslam for burial. Complainant along with ASI Atta Mohiyuddin and other staff went to the place of wardat where old as well as young ladies, while crying there on wardat, told him (complainant) that accused Azizullah by fire shot had murdered deceased Mst: Labiya at the instance of Muhammad Aslam and Ishaque, who all three were present there but hearing the version of ladies fled away. SHO Riaz Ahmed returned to P.S and registered FIR as no one was ready to lodge complainant.

3. Learned counsel for applicants/accused argues that this is an un-witnessed incident as no one had seen the applicants/accused while committing the murder of deceased; that the evidence of complainant is hearsay one; that no statement of any female relative of deceased was

recorded by SHO; that no blood stained earth was recovered from the place of incident; that confessional statement of applicant/accused Muhammad Aslam was got recorded under pressure; that the statement of co-accused cannot be used against applicant/accused Azizullah; that the gun alleged recovered in the case has been foisted upon applicant/accused Azizullah; that no motive of the alleged incident is disclosed in the case.

4. In contra, learned APG vehemently opposed this application on the grounds that applicants/accused are nominated in the FIR; that dead body was recovered from the house of applicants/accused; that the deceased was sister of applicant/accused Muhammad Aslam but he, by concealing real facts, informed the police about her death accidentally; that medical evidence fully supports the prosecution case.

5. I have given due consideration to arguments advanced by the parties' counsels and have gone through the case papers so also case laws referred above.

6. The *peculiar* facts of the present case show that the death of deceased occurred at 5.00 a.m by way of fire shot, allegedly made by applicant/accused Azizullah, the cousin of the deceased. There is no denial of murder of deceased inside the house of applicant/accused. As per FIR deceased's parents were already dead and she was putting up with his brother applicant/accused Muhammad Aslam. I would not hesitate in saying that criterion to deal with a case, *completely* based on circumstantial evidence, is not similar to that of an *ordinary* case, having ocular account. A *crime*, if committed inside a *place*, normally will reveal no *motive* nor will have *eye-witnesses* because such *crime* within a *confines* would be presumed to be done with consent of all, particularly of commanding persons, except *victim* however, the *crime* shall remain a *crime* requiring a *punishment* so as to maintain a balance hence *normal* principles of law, if insisted, would result in giving a license to such *crimes* which insist that in absence of *ocular* account (failure) no conviction could be recorded. This has been the cause and reason that in such *like* cases the initial burden is always upon the accused to explain

as to how and in which circumstances the crime happened and prosecution only has to establish co-existence of all links in a shape of *unbroken* chain. Reference may also be made to the case of Arshad Khan v. State 2017 SCMR 564 wherein it is held as:

“4. It may be true that it has been held by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) that in such cases some part of the onus lies on the accused person to explain as to how and in which circumstances the accused person’s wife had died an unnatural death inside the confines of the matrimonial home but at the same time it has also been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the prosecution completely fails to discharge its initial onus there no part of the onus shifts to the accused person at all.

Thus, I would say that if *prima facie* the prosecution places a chain of circumstances which, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved, then the *initial* burden would be upon the accused to explain the manner in which the offence, committed at a place, within their exclusive control, even at bail stage where deeper appreciation of evidence is prohibited.

7. It is a matter of record that there is no explanation as to what compelled the deceased to come in front of the house of accused Azizullah and what for he (accused Azizullah) was holding gun in such night time in the house which *otherwise* was / is necessary for *plea*, taken by the accused while admitting the unnatural death of the deceased. It is also a matter of record that according to confessional statement of accused Muhammad Aslam, accused Azizullah at the instance of his father/co-accused Muhammad Ishaque fired shot at the deceased who *all were / are prima facie* the controlling persons of such *confines*. I may add that confessional statement of co-accused may not be sufficient for conviction but within meaning of Article 43 of Order it can be used a circumstantial evidence, even at bail stage. Reference may be made to the case of Ghulam Ahmed Chishti v. State 2013 SCMR 385 wherein it is held as:

8. The statement of Shehzad *ex facie* is an incriminating piece of evidence. The statement of a person who was

initially a co-accused alone may not be sufficient to convict someone but in terms of Article 43 of the Qanun-e-Shahadat Order, it can be used as a circumstantial piece of evidence even at bail stage to form a prima facie view about involvement of a person.

8. The next piece of evidence which also indicates the involvement of the applicants/accused in the case is that on arrival of police on wardat and after disclosure of incident by ladies that both the applicants/accused with absconder accused committed murder of deceased, they fled away from wardat. Such *conduct* of the accused / applicants also seems strong evidence against the applicants/accused in the case unless *otherwise* explained. Furthermore, as per post-mortem report of the deceased the entry wound on her person was with burning around, it shows that the fire was made on the deceased from close distance which supports the story stated by her female relatives to police/complainant on wardat. Apart from above, as per FSL report the empty cartridge recovered from the place of wardat was found fired from the crime weapon viz gun allegedly recovered on the pointation of applicant/accused Azizullah. Thus, *prima facie* the applicants / accused have failed to make out a case of further inquiry by showing any *inconsistency* in circumstantial evidences which *otherwise* link the applicants / accused with commission of the offence with which they are charged. Consequently, this bail application being devoid of merits is dismissed.

JUDGE

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