

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-60 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing.

25.06.2018.

Mr. Omparkash, Advocate for applicant.
Ms. Sobia Bhatti, Assistant P.G.

ORDER

AMJAD ALI SAHITO, J:- Through this Criminal Bail Application, applicant Karman S/o Chatro Bheel seeks post-arrest bail in Crime No.30 of 2017, registered at P.S Boder Farm District Umerkot, under Section 322 & 34 PPC, after his bail plea has been declined by the learned Session Judge, Umerkot, vide order dated 18.12.2017.

2. Concisely, the facts as narrated in the FIR are that on 10.10.2017, complainant Neelo lodged report of the alleged incident took place on 09.10.2017 stating therein that he is peasant worker and has four brothers residing in one and the same house. His elder brother namely Ladho was not feeling well since last four weeks and told such illness to accused Lalji @ Lallo and his follower Karman, who disclosed that his brother Ladho is under the influence of un-human being and requiring the proper treatment religiously. Accused Lalji and Karman Bheel started to read the religious cermons and so also they were throwing the burning coal on complainant's brother Ladho, who

was requesting to them that he is under influence and during the course of reading the religious cermons, Ladho took his last breath and then both the accused persons ran away from the scene. Thereafter, the complainant informed the police and the police reached at the place of incident. The dead body of the deceased was shifted to the hospital for postmortem and after conducting postmortem, the dead body was handed over to the complainant for funeral ceremony and after funeral the complainant lodged the instant FIR.

3. Learned Counsel for the applicant contended that the applicant/accused is innocent and has been falsely implicated in this crime; that the alleged incident is highly doubtful as the prosecution story seems to be false, manipulated and unbelievable; that no specific role has been assigned to the applicant/accused in the FIR as the allegations made by the complainant in the FIR are general in nature; that the FIR is delayed for 17.1/2 hours without any plausible explanation, which shows due deliberation and consultation on part of the complainant in order to involve the present applicant; that the applicant has been charged under Section 322 PPC which does not provide imprisonment and punishment provided by law is only Diyat; that the police was present at the place of incident and did not recover any case property except clothes as mentioned in property column of challan; that all the P.Ws are close relatives of the complainant; that the applicant has never remained dangerous and desperate person even he is not a

previous convict. He lastly submitted that in these circumstances applicant is entitled for grant of post-arrest bail.

3. Learned A.P.G for the state opposed for grant of bail to the present applicant and submits that sufficient evidence is available on record to connect the applicant with commission of the offence.

4. Heard learned Counsel for the applicant as well as learned A.P.G and perused the record minutely.

5. The record reflects that the FIR is delayed for 17 hours, for which no plausible explanation has been furnished by the complainant. Further, no specific role has been assigned against the present applicant. As to the contention of the learned Counsel for the applicant that since the applicant has been charged under Section 322 PPC, which does not provide by way of imprisonment, therefore, the applicant is entitled to be admitted on bail. Suffice to say, that the applicant/accused can be detained in jail pending investigation or decision if the dictates of justice demand and for this reason the legislature in his wisdom has placed the offence under Section 322 PPC under the head of non-bailable offence. As per complainant, deceased Ladho died as the accused party hit his head and thrown burning coal fire upon him but the final medical certificate available on record (Annexure E-35) shows the opinion of the Doctor "the cause of death was cardio-respiratory failure due to illness. Septicemia Shock". Thus, the medical evidence apparently contradicts the ocular accounts. The story narrated

by the complainant in the FIR is not getting support /confirmation from the medial evidence. In the case of *AWAL KHAN & 07 OTHERS V/S. THE STATE through AG-KPK & ANOTHER*, reported in 2017 SCMR 538, the Hon'ble Supreme Court of Pakistan has observed as under:-

*“9. As the number of injuries on the deceased, a single inlet and exit wound and two shots fired at the two victims each with the short gun probably is the job of two persons at the most but nine persons have been charged for effectively firing at them. **Thus the contradiction between the ocular account and medical evidence has rendered the case of the petitioners to be one of further inquiry at the moment.**”*

(Underlining is emphasized by me)

6. *A tentative assessment of all the above factors and the material available on record makes the case of the applicant/accused one of further inquiry in terms of Sub-Section 2 of Section 497 Cr.P.C. Accordingly, the instant bail application stands allowed. Consequently, applicant Karman S/o Chatro Bheel is admitted to bail upon his furnishing a solvent surety in the sum of Rs.100,000/- (One Lac) and P.R Bond in the like amount to the satisfaction of the learned trial Court.*

7. *Needless to mention that the observations made herein above are tentative in nature and would not prejudice the case of either party at trial.*

JUDGE