

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-1070 of 2018.

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.

2. For hearing of main case.

13.02.2019.

Mr. Gulzar Ali Soomro, Advocate for the applicant.

Mr. Shahid Ahmed Shaikh, D.P.G.

=

**Zulfiqar Ahmad Khan, J:** Through instant Criminal Bail Application, the applicant seeks post-arrest bail in Crime No.10 of 2017, registered at Police Station Coal Mine, u/s 302, 34 PPC.

2. Concisely facts of the case are that on 05.08.2017 at 2200 hours complainant Babur Ghurmani Khoso lodged F.I.R. at P.S Coal Mines, stating therein that his paternal niece Mst. Hajran D/o Dost Ali was married to his maternal nephew Abdul Karim, with whom he has family visiting terms. On 30.07.2017 he was out of area and when returned to his home on 05.08.2017, his son Sherzado and Shoukat Ali the son of his cousin Fateh Ali informed him that on 30.07.2017 they both went to meet with Abdul Karim in his village Kandeer, when at about 0830 hours they reached near the house of Abdul Karim, they saw Piyaro S/o Jangu while falling down over Mst. Hajran on ground and sitting on her was strangulating her neck. They made hakals to him and he went away on motorcycle alongwith two other persons who were seen by them from their back and all the accused went away towards northern side. Then, they saw that Mst. Hajran was dead. Thereafter, Abdul Karim and others came, they disclosed such facts to them, who disclosed them to bury the dead body of the deceased and on arrival of Babur they will lodge F.I.R. Thereafter, dead body of Mst. Hajran was buried without post-mortem. On hearing so, complainant alongwith Sherzado and Shoukat went to the house of Abdul Karim and lodged the F.I.R. at Police Station Coal Mine.

3. Learned counsel for the applicants *inter alia* contends that the applicant is innocent and have falsely been implicated in this case due to matrimonial dispute; that prior to this, the bail plea raised on behalf of the applicant was declined twice by the trial Court on merits; that the material prosecution witnesses have been examined by the trial Court where they have not fully supported the prosecution case; that the eye-witnesses are close relatives of the deceased but they did not identify brother of husband of deceased on spot and shown him as unidentified, therefore, there appears no iota of evidence against the applicant to connect him with the commission of alleged offence, thus the case of the applicant is one of further inquiry and he may be enlarged on bail.

4. Learned Deputy Prosecutor General while opposing the instant bail application contends that while examining before the trial Court, eye-witnesses have supported the prosecution case and they have fully implicated the applicant in the commission of alleged offence; that the applicant murdered his wife (Mst. Hajran); that the delay in lodging of the F.I.R. has been plausibly explained by complainant party; as such, he is not entitled for concession of bail.

5. I have considered the arguments of learned counsel for the applicants, learned D.P.G for the State and perused the material available on record.

6. From appraisal of the F.I.R, it is the prosecution story told by the complainant that while at home on 05.08.2017, his son Sherzado and Shoukat Ali, son of his cousin Fateh Ali, narrated to him that on 30.07.2017 (the date of death of Mst. Hajran), they both left for meeting with Abdul Karim at his home situated in village Kandeer and when at about 0830 hours they reached near the house of Abdul Karim (husband of the lady), they saw that applicant Piyaro S/o Jangu by falling down Mst. Hajran on ground was strangulating her neck. Per complainant, they gave hakals when the applicant left Mst. Hajran and by riding on a motorcycle two people seated on the back and then they went away towards northern side. When they reached near Mst. Hajran they found that she was dead. It is also their version that they informed Abdul Karim (husband of

the deceased) and narrated all story to him, but instead of approaching police or reporting the crime, they decided for the burial of the deceased and chose to wait till the arrival of deceased's uncle Babur Ghurmani, who came and lodged the instant F.I.R. on 05.08.2017 with regard to a crime committed on 30.07.2017.

7. Thereafter, the body of the deceased was exhumed where initially through report (page-109), following provisional conclusion was drawn:-

“The members of Special Medical Board are of unanimous opinion that at this belated stage soft tissues of neck anteriorly not display mark of violence, back of neck found decomposed and hard tissues are found intact, anatomical cause of death attributable to violence over neck or other parts of body is not ascertained.”

8. Thereafter, final medical report was issued, which is available on page-117, with the following conclusion:-

“As no any toxic substance is detected in Chemical Examiner's report responsible for the death of above named deceased, hence the Special Medical Board has unanimously concluded that the cause of death of exhumed dead body of deceased Mst. Hajra W/o Abdul Kareem remained undetermined.”

9. From these two documents, it appears that no un-natural cause of death of Mst. Hajran has been ascertained, giving reasons to believe that she probably died naturally. Per story of the prosecution, the incident took place 05 days before lodging of the F.I.R, which is not even filed by any eye witnesses. As the alleged murder was seen by son/nephew of the complainant, and made known to the husband on the date of the incident, why none of those chose to become complainant, this question too raises doubts. The lady was buried in a natural way with no fuss. The only piece of evidence thrown towards the applicant is that he was allegedly seen strangulating the deceased from some distance by two eye-witnesses, who were travelling towards the house of the deceased to meet her husband. The entire story does not appeal to logic or satisfy an inquisitive mind, in particular when the medical report as to the cause of death showed no mark of strangulation on deceased's neck. The F.I.R. which was lodged after 05 days, and the complainant chose to implicate the applicant in that crime stating that his son/nephew saw the applicant strangulating the deceased but the family did not report the case or had post-mortem conducted,

clearly shows that they have skeletons in their cupboards. It was 08:00 AM. and the eye witnesses state that they were on their way to meet Abdul Kareem at his house, suggesting that later was at home, then how come he did not see the alleged murderer nor come to rescue his wife which was being strangled raising hue and cry. The Medical Board which was constituted to examine the exhumed body in order to know the cause of the death in its final report has opined that “the cause of death of deceased remained undetermined”. Clearly the ocular version is not at all corroborated by the medical examination report, and tentatively causes serious jolts to the prosecution story. The presence of the eye-witnesses at the place of occurrence on the relevant time as well as their conduct shown at the relevant time appears to be doubtful, and the ocular account furnished by the complainant party has not been supported by the medical evidence as mentioned above, thus, I am of the view that tentatively the prosecution has failed to establish the guilt against the present applicant beyond any reasonable doubt, and it is well settled principle of law that for creating shadow of doubt, it is not necessary that there should be many circumstances, if a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as the matter of right. The reliance in that context is placed on the case of **Muhammad Mansha v. The State** (2018 SCMR-772), wherein the Hon“ble Supreme Court of Pakistan observed that:

4.--- Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim,” it is better that ten guilt persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State(1995 SCMR-1345), Ghulam Qadir and 2 others v. The State(2008 SCMR-1221), Muhammad Akram v. The State(2009 SCMR-230) and Muhammad Zaman v. The State(2014 SCMR-749).”

10. In view of the above, tentatively the applicant has been able to make out his case as of further inquiry. Accordingly, he is admitted to bail subject to his

furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

11. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

The bail application stands disposed of.

JUDGE

S