

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

Cr. Bail Application No.S-944 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objections.
2. For hearing of main case

Applicants: **Shadu son of Chumoon**
Chumoon son of Kalo
Through Mr. Aziz Ahmed Leghari, advocate

Complainant: **Sajan Bheel**
Through Mr. Sikandar Ali Kolachi, advocate

The State: Through Mr. Shahid Ahmed Shaikh, DPG

Date of hearing: 22.2.2019

Date of decision: 22.2.2019

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the instant Criminal Bail Application, Applicants namely Shadu son of Chumoon and Chumoon son of Kalo are seeking post arrest bail in Crime No.23 of 2018, registered under sections 302/201/114/34, PPC at Police Station Bodar Farm.

2. Prosecution story in nutshell is that on 06.07.2018, at about 03:30 p.m., Soomar Bheel informed the complainant namely Sajjan bheel that his daughter Shrimati Leelan is dead. The complainant rushed at the spot i.e. house of the applicants, situated at the village shuhabuddin, Deh kheeroy, where he saw dead body of his daughter Shrimati Leelan, he suspected that she had been murdered. He also found his another daughter Jamna, who was unconscious. He brought the dead body of his daughter Shrimati Leelan and his unconscious daughter Shrimati Jamna to his village and informed the police accordingly with the allegations that his daughter Shrimati Leelan has been

murdered; that upon regaining the senses, Shrimati Jamna disclosed the factum of alleged incident that his sister Shrimati Leelan was caught hold by her father in law with arms, while her brother in law Sadhu caused blunt side hatchet blow to Shrimati Leelan and killed her and thereafter in order to conceal the crime, hanged the dead body in the room. Police registered F.I.R of the crime and started investigation. Investigating Officer, recorded statements of prosecution witnesses arrested and interrogated the applicants; got conducted Medical examination of deceased and obtained its Postmortem report. Finally, Investigating Officer submitted Report under section 173 CR.PC on 22.9.2018 before the learned Trial Court under "Cancel class". The learned Magistrate vide order dated 11.09.2018 declined to accept the report of Investigation Officer and took cognizance of the matter with direction to the Investigating Officer to submit Charge-sheet in the aforesaid crime. Applicants filed Criminal Bail Application No. 287/ 2018 before the learned Trial Court, which was dismissed vide order dated 03.10.2018, with the findings that offence is punishable with death and falls within the ambit of prohibitory clause of section 497(1) CR.PC, however he opined that mere declaring the applicants innocent at the investigation stage is of no consequence on the premise that it requires deeper appreciation as to whether they are guilty of the alleged offence or otherwise, thereafter the present Bail Application has been filed, whereby the applicants impugned the order dated 03.10.2018 passed by the learned Sessions Judge Umerkot.

3. Mr. Aziz Ahmed Leghari, learned counsel for the applicants has contended that the applicants have falsely been implicated in the instant case, while the FIR was lodged after a delay of 03 days without any plausible explanation. It is contended that the complainant is not an eyewitness of the incident, which creates serious doubt in the prosecution story, however, due to matrimonial dispute, he dragged the applicants in this false case. He

contended that the real fact is that the deceased Leelan had committed suicide by hanging herself. The complainant alleged in the FIR that the deceased is murdered by hatchet blow and then she was hanged, while the postmortem report shows that the cause of death of deceased is due to asphyxia, which was caused by hanging. As per postmortem report there are no marks of physical assault on the dead body of the deceased, which is contrary to the version of the complainant. It is further contended that 161 Cr.P.C. statements of PWs have been recorded after considerable delay. The applicants are not previous convicts/criminals and their case requires further inquiry into their alleged guilt. He lastly prayed for grant of Bail in the matter.

4. In rebuttal, Mr. Sikandar Ali Kolachi learned counsel for the complainant has vehemently opposed the bail application and has contended that the accused persons are nominated in the FIR with specific role of committing murder of the deceased. He further argued that postmortem report reveals that the injuries were found on the body of the deceased and submitted that the delay in lodging the FIR has been explained by the complainant in the FIR. He further submitted that the eyewitness Shrimati Jamna has fully supported the version of FIR in her statement recorded under Section 161 Cr.P.C. He, therefore, prays for rejection of present Bail Application. In support of his contentions, learned counsel for the complainant has relied upon the following case law: -

- i. 2000 SCMR 78 [*Muhammad Bashir v. State*]
- ii. 1996 SCMR 555 [*Abdul Hayee v. State*]
- iii. 2012 SCMR 556 [*Mumtaz v. State*]
- iv. 2008 P.Cr.L.J. 1555 [*Muhammad Imran v. State*]
- v. 2010 P.Cr.L.J. 914 [*Muhammad Aslam v. State*]

5. Mr. Shahid Ahmed Shaikh, learned Deputy Prosecutor General for the State has adopted the arguments of the learned counsel representing the complainant and opposed the grant of bail to the applicants on the ground that the delay in lodging of the FIR has been explained as the complainant first got

conducted postmortem of dead body of deceased and after funeral ceremony, he lodged FIR promptly. He further argued that postmortem report reveals that there are marks of injuries on the body of deceased.

6. I have heard learned counsel for the applicants, learned DPG for the State, learned counsel for the complainant and perused the material available on record as well as case law cited at the Bar.

7. I have noticed that the applicants filed Criminal Bail Application No. 287 of 2018 before the learned District & Sessions Judge, Umerkot, which was dismissed vide order dated 03.10.2018. The findings of the learned trial Court are based on the premise that the applicants are nominated in the subject crime with specific role of causing hatchet injuries to the deceased daughter of Complainant; that offence is punishable with death and falls within the ambit of prohibitory clause of section 497(1) CR.PC, however he opined that mere declaring the applicants innocent at the investigation stage is of no consequence on the premise that it requires deeper appreciation as to whether they are guilty of the alleged offence or otherwise.

8. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Honorable Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a Bail Application the Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against accused, nature and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State [2010 SCMR 1221].

9. Keeping in view the above guidelines, let me now enter into the question as to whether there is a situation warranting for allowing Bail to the

applicants, taking into consideration the rival contentions and the facts and circumstances presented in the case in hand. On a careful perusal of tentative assessment of the record, it seems to me that in the present murder case the non-explanation of the following important circumstance of the case, prima-facie the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version, which is sufficient ground to enlarge the applicants on Bail:

- i). Alleged crime took place on 6.7.2018 and reported on 9.7.2018 (delay of three days)
- ii). Complainant and P.W Soomar are not eye witnesses of the alleged incident.
- iii). Eyewitness Shrimati Jamna recorded her statement on 31.7.2018 (delay of 25 days).
- iii). Postmortem examination report shows that death is caused due to asphyxia caused by hanging.
- iv). Investigating Officer submitted Report under section 173 CR.PC under Cancel class.

10. The facts of the present case clearly fall within the four corners of section 497(2) CR.PC, on the premise that the prosecution does not explain the injuries on the person of the deceased in their 161 CR.PC statements, which was sufficient to cause death. On the contrary, Postmortem examination report shows quite different story that death is caused due to asphyxia caused by hanging. The important question arises in the present proceedings is as to why sole eyewitness Shrimati Jamna recorded her statement on 31.07.2018 after delay of 25 days. Prima-facie the entire prosecution case requires deeper appreciation and the genesis of the occurrence is shrouded in deep mystery which can be threshed out in evidence, till that present case requires further enquiry into the guilt of the applicants.

11. In view of the above facts and circumstances, I am of the tentative view that applicants have made out a case for grant of post arrest bail in the aforesaid crime. Therefore, Applicants Shadu son of Chumoon and Chumoon

son of Kalo are granted post arrest Bail subject to their furnishing solvent surety in the sum of 300,000/- (Rupees three lacs) each and P.R. bond in the like amount to the satisfaction of learned trial Court.

12. The above findings are tentative in nature which shall not prejudice the case of either party during trial.

13. Foregoing are the reasons of my short order dated 22.02.2019.

JUDGE

Zahid/*