

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

Cr. Bail Application No.S-204 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 28.02.2019

Date of order: 28.02.2019

Mr. Ayaz Ali Ghuryani, Advocate for Applicant.

None present for the complainant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General a/w SIP  
Imam Ali of PS Jamshoro.

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**Zulfiqar Ahmad Khan, J:** Through the instant Criminal Bail Application, applicant Nasir S/o Muhammad Usman seeks post-arrest bail in Crime No.210 of 2015, registered at Police Station Jamshoro U/S 302, 34 PPC. Earlier the bail plea of the applicant was declined by the learned trial Court vide order dated 09.06.2016.

2. Concisely facts of the case are that on 09.10.2015 at 1230 hours complainant Mazar S/o Yaqoob Tongal Burfat lodged F.I.R stating therein that he was working in Pakistan Railways as Gang Man and his son deceased Zubair Ahmed aged about 25 / 26 years was working as laborer at Brohi (Crash) near Toll Plaza. On 06.09.2015 at evening time, Zubair Ahmed returned back from work and at about 0400 hours he told them that he was going to city. However, he from work and at about 0400 hours he told them that he was going to city. However, he did not return till night. Then, they at about 08:30 to 08:45 contacted at his mobile No.0347-3139019 but he did not receive call. On 07.09.2015 at morning, some villagers namely (1) Hakim Ali S/o Peero, (2) Nasrullah S/o Muhammad Rahim, (3) Allahdino S/o Mehar Khan all by caste Tongal Burfat informed him that his son Zubair Ahmed was lying in injured condition at Malik's land. On such information, he alongwith Asghar arrived at the land, where he saw that his son was lying in injured condition and was not able to speak, while, there was hole on the neck of his son as well as marks of stick (danda) on back side of body of his son. On this, they informed to police and police came there at spot. Thereafter, they shifted Zubair Ahmed at Jamshoro Hospital but he could not

succumb to the injuries and died in the way while going to the hospital. After completion of necessary requirements and postmortem they made funeral arrangements of Zubair Ahmed, and tried to find the accused but did not get any information. Hence, complainant lodged instant F.I.R of this case accordingly.

3. Learned counsel for the applicant *inter alia* contends that applicant is innocent and has falsely been implicated by the complainant; that there is 33 days delay in lodging the F.I.R which has not been explained by the complainant satisfactorily; that from bare reading of the F.I.R the name of applicant was not transpired besides the alleged incident is unseen incident; that as per complainant he was informed by three co-villagers though complainant had sufficient time to rescue his son but he did not do so and the alleged incident is based on hearsay evidence; that all the witnesses who recorded their statements under Section 161 Cr.P.C deposed that deceased was died by inflicting knife blows which is contradictory with post mortem report. Lastly he prayed for grant of bail to the applicant.

4. Conversely, learned D.P.G for the State vehemently opposed the grant of bail to the applicant / accused on the ground that there is sufficient material available on record to show that the applicant has committed murder of the deceased and PWs have supported the version of complainant as well as medical evidence is corroboratory hence no case for grant of bail is made out.

5. I have carefully considered the arguments of learned counsel for the applicant, learned Deputy Prosecutor General and perused the material available on record. Appraisal of the record shows that admittedly there is no eye witness of the incident and complainant has lodged instant F.I.R. against the unknown persons and subsequently in his statement recorded u/s 162 Cr.P.C he implicated the present applicant.

6. Admittedly, as per FIR this is an unseen incident and the entire case depends upon hearsay evidence; no iota of evidence is gathered by the prosecution to connect the applicant in this heinous offence; applicant has retracted / resiled from his confessional statement by saying that same was got recorded by police by issuing threats of dire consequences; medical evidence also does not support the version of the

complainant. Moreover, there are general allegations against the present applicant and no specific role has been assigned to the applicant; there is long delay of 33 days in lodging of the FIR for which no any plausible explanation has been furnished by the complainant; no marks of violence have been found on the person of the dead body during the medical examination. No sufficient evidence has been brought on record which show that the present applicant has committed the murder of deceased and only on hearsay evidence the applicant cannot be held responsible for the murder of deceased. No report with regard to blood stained earth is available on record and only recovery of nail cutter is alleged to have been affected from the accused which can easily be available in the market. It also does not appear from the record whether the said nail cutter was sent to the chemical examiner or not.

7. The residual effect of the above discussion in my tentative view is that the applicant has succeeded in making out a case for grant of bail. Accordingly, he is granted bail subject to his furnishing solvent surety of Rs. 50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of the trial Court.

8. 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.

**JUDGE**

Tufail/PA