

*ORDER SHEET*

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

1. Cr. B.A. No.S-191 of 2019.

2. Cr. B.A. No.S-192 of 2019.

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DATE

ORDER WITH SIGNATURE OF JUDGE

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13.09.2019.

Mr. Muhammad Sachal R. Awan, Advocate for the Applicant.

Ms. Sobia Bhatti, A.P.G, Sindh.

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**ORDER**

By this common order, I propose to dispose of these two bail applications bearing Cr. B.A. No.S-191/2019, arising out of F.I.R. No.175/2018 of P.S. Jamshoro (u/s 302, 311 and 34 PPC), registered in respect of an incident which was occurred on 05.07.2018 at about 0900 hours and Cr. B.A. No.S-192/2019, arising out of F.I.R. No.182/2018 of P.S Jamshoro (u/s 25 Sindh Arms Act, 2013), which is the offshoot of aforementioned main case, thus common question of facts and law is involved.

2. Through captioned bail applications, Applicant Muhammad Ibrahim seeks post-arrest bail in the aforementioned crimes.

3. The facts of prosecution case as stated in the F.I.R. bearing Crime No.175/2018 are that, on 05.07.2018 complainant/Inspector Manzoor Hussain Mallah of P.S Jamshoro received information from Emergency Ward of LUMHS Hospital Jamshoro regarding the receipt of dead body of one lady who had received firearm injury. Upon receiving such information, ASI Ali Bux Chandio proceeded there and after completing legal formalities, he returned at Police Station and disclosed that the dead body of Mst. Reshma D/o Muhammad Ismail by caste Gopang was lying in LUMHS hospital where her father was present and she had received firearm injury. After conducting post-mortem examination, dead body was handed over to her father and then police asked them to lodge report; however, they did not turn up to lodge report, and complainant received secret information that Muhammad Ismail

and his son Muhammad Ibrahim (Applicant) alongwith their unknown accomplices committed murder of Mst. Reshma by leveling indecent allegations against her, hence this F.I.R.

4. As per F.I.R. No.182/2018 (u/s 25 Sindh Arms Act, 2013), during investigation of main case i.e. Crime No.175/2018, accused / Applicant Muhammad Ibrahim voluntarily produced the crime weapon i.e. 30-Bore pistol which, according to him, he used while committing the murder of deceased Mst. Reshma. Thereafter, complainant / SIP Roshan Ali on behalf of the State lodged instant F.I.R.

5. Learned counsel for Applicant in both applications, *inter alia*, submits that the Applicant is innocent and has been falsely involved in this case by police; that there is inordinate delay of 02 days in lodging the F.I.R; that this is an un-witnessed incident and no corroborative piece of evidence is available; that no incriminating article has been recovered from the possession of the Applicant to connect him with the commission of alleged offence; that the statement of Applicant before police is not admissible under the law. Besides merit, learned counsel for Applicant further contended that Applicant is also entitled for bail on the principle of rule of consistency because on same facts and circumstances co-accused Muhammad Ismail has been granted post-arrest bail by this Court vide order dated 28.12.2018, hence the Applicant also deserves same treatment. As regard the recovery of 30-Bore pistol, learned counsel for the Applicant submits that such pistol has been foisted upon him and it is a licensed weapon of his father.

6. Learned A.P.G. after going through the files as well medical evidence submits that Applicant is involved in a heinous offence of murder of his real sister and he has not filed any application before the concerned Ex-Officio Justice of Peace to show that he or his father wants to lodge F.I.R. in respect of the said incident and he remained silent though the deceased was died after receiving firearm injuries and the place of incident is also the house where Applicant too live and she therefore prays for dismissal of instant

applications; however, she does not controverts the bail granting order to co-accused Muhammad Ismail in Cr. B.A. No.S-753 of 2018.

7. I have heard the parties counsel and perused the material available on record.

8. The incident as stated in the F.I.R. is an unseen one and no direct role has been assigned to the Applicant. The post-mortem report shows that the dead body was identified by co-accused Muhammad Ismail, who was real father of deceased Mst. Reshma. Contents of F.I.R. further show that father of the deceased was also at hospital and police initiated some proceedings in case relating to post-mortem. Admittedly, there is delay of 02 days in registration of F.I.R. and it is not possible for the accused, who after committing murder kept evidence (pistol) in safe custody by knowing that such may be used against him. In these circumstances, recovery of pistol is doubtful. It also appears that Applicant was arrested on 08.07.2018 and the recovery of pistol is shown on 18.07.2018, which seems from the face of it as doubtful. Record further shows that recovered pistol and one empty, which was recovered from the place of incident, have not been sent to Ballistic Expert for examination and report to connect the Applicant with the commission of alleged offence and that the empty has been fired from said pistol. Such fact has been admitted by the learned A.P.G. who also verified from the police file but could not find any evidence which shows that pistol and empty bullet were sent to Ballistic Expert.

9. It also appears that statements under section 161 Cr.P.C. of the prosecution witnesses were recorded on 02.08.2018, much after about one month of the incident without any plausible explanation, which also shows that these witnesses are not eye-witnesses of the incident. In this context reliance is placed on the case of **Suba Khan v. Muhammad Ajmal and 2 others** (2006 SCMR 66). Further in cases of recording delay in statements under section 161 Cr.P.C. of the witnesses bail has been granted by Lahore High Court in the case of **Muhammad Akram v. The State** (1997 CrLJ 569), wherein it is held as under:-

“S. 497(2). Accused would be entitled to bail when statements of P.Ws. recorded two days after occurrence make their case one of further inquiry.”

10. Admittedly, bail to co-accused Muhammad Ismail has been granted by this Court vide order dated 28.12.2018 in Cr. B.A. No.S-753 of 2018 and no overt act has been attributed to the present Applicant, accordingly, he is also entitled for same treatment in the main as well as the offshoot case.

11. In view of above, the Applicant has successfully made out his good prima facie case for his admission on post-arrest bail in both cases. Resultantly, the applications are allowed and the Applicant is granted post-arrest bail in both crimes subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) in each case and P.R. Bond in the like amount to the satisfaction of the trial Court.

12. Needless to mention that the observation made hereinabove are tentative in nature and will not cause any prejudice to either party at the trial.

JUDGE

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