

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

*Criminal Bail Application No.S-1216 of 2020*

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objections.
	2. For hearing of main case.
<b><u>09.08.2021</u></b>	

Mr. Ashique Hussain D. Solangi, Advocate for the applicants No.1 & 2.  
Mr. Ashfaque Ahmed A. Solangi, Advocate for the applicant No.3.  
Ms. Sana Memon, Assistant Prosecutor General, Sindh.

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Date of hearing: 09.08.2021  
Date of decision: 13.08.2021

**ORDER**

**KHADIM HUSSAIN TUNIO, J.-** This is an application under section 497 Cr.P.C filed on behalf of the applicants praying for their release on bail in case emanating from Crime No. 26 of 2020, for offence punishable under sections 302, 34 and 201 P.P.C, registered at P.S. Chhachhar at Sann. The applicants had earlier approached the learned Trial Court with the plea to enlarge them on bail but same was declined by the learned Additional Sessions Judge, Sehwan vide his order dated 08.12.2020.

2. The brief facts of the case as unfolded in F.I.R are that son of complainant namely PW Wahid Dino on 27.06.2020 left for Hyderabad in connection of some work and he came back home on 28.06.2020 at 02:00 a.m. and informed the complainant that as soon as he reached Chhachhar stop at about 01:45 a.m. he heard the cries of a woman and on the light of vehicles saw that present applicants; Ali Bux having a hammer, Karim Bux having a stone and Ghulam Qadir having a danda were beating the said woman and a Mehran car was parked near them. The applicants on seeing PW Wahid Dino dragged the dead body towards Southern side and went away in said car. The dead body was

identified by Wahid to be his sister namely Wazeeran, for that the present F.I.R was lodged.

3. Learned counsel for applicants Ali Bux and Karim Bux has contended that the complainant disclosed the names of Idress, Mst. Rasheeda, Hakeem, Manthar and Manzoor in his further statement recorded on 28.09.2020 alleging them to be culprits of this case which is contradictory to the version of his F.I.R; that said accused Idress, Mst. Rasheeda, Hakeem, Manthar and Manzoor were let off by the police while submitting report under section 173 Cr.P.C; that DNA report is negative; that the injuries allegedly mentioned in post-mortem report are not mentioned in F.I.R; and, that the case has been challaned yet not a single witness is examined by the Trial Court. Whereas, learned counsel for applicant Ghulam Qadir, while adopting the arguments advanced by counsel of the other two applicants, has further argued that there is delay of one day in the lodging of F.I.R; that the incident is an unseen one; that there is a huge delay in recording further statement of PWs; and that there is no specific role assigned and general allegations are leveled against the applicants.

4. Learned Assistant Prosecutor General Sindh has opposed the release of the applicants on bail by contemplating that names of all three applicants are mentioned in F.I.R with specific role assigned to them; that PW Wahid Dino on hearing the cries of a lady went to the crime scene and saw on the light of vehicles that the applicants were causing injuries to a lady whose corpse was identified by him to be his sister deceased Mst. Waziran; that after exhumation of dead body, the post-mortem was conducted; that it was not an accident case as medical record support the prosecution case. She lastly prays that the applicants are not entitled for their release on bail.

5. I have heard the learned counsel for the respective parties and have gone through the record. A tentative assessment of the record pertains that all three applicants have been nominated in the FIR,

having specific weapons *i.e.* hammer and stones and have also been assigned roles of causing injuries to the face and body of the deceased. The source of light during the odd times of night is not up for consideration as the parties are known to each other therefore; the present case does not appear to be one of mistaken identity. As far as the one day delay in the lodging of FIR is concerned, not only has it been explained but it has also been observed by the Hon'ble Apex Court in the case titled **Haji Guloo Khan v. Gul Daraz Khan and others (1995 SCMR 1765)** that no doubt, benefit arising from the delay in lodging the FIR goes to the accused, which *could* be taken into consideration along with other circumstances, in the present case while deciding the bail application, however delay in lodging of FIR alone is not to be considered a circumstance which is sufficient for grant of bail in a case carrying capital punishment. The post-mortem report also backs up the ocular account furnished by the prosecution witness Wahid Dino who is the brother of the deceased. After the initial post-mortem, a team of medical professionals also sat together for the examination of the dead body. Upon examination, they found various injuries including a fractured skull. The provisional conclusion furnished by the said medical team disclosed that the injuries were caused by heavy, hard and blunt objects and that the death was instantaneous after the infliction of injuries. A hammer and stones qualify as blunt force objects and therefore corroborates the version furnished by the eye witness. The number of injuries, the weapon of choice and the gruesome nature of the offence depict the barbaric nature of the applicants from the face of it. Moreover, motive has also been furnished by the complainant party by disclosing that there were matrimonial issues between the parties and the applicant Ali Bux had time and again threatened the deceased to stop her father from asking for the hand of Mst. Zahira, the niece of the applicant Ali Bux or the deceased would be done to death. The offence with which applicants are charged is heinous one and carries punishment up to death.

6. Furthermore, it is a settled principle of law that bail in cases of commission of non-bailable offences and particularly falling within the Prohibitory Clause of S. 497 Cr.P.C. and carrying capital punishment is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry as alleged by the counsel for applicants, without keeping in view the entire provisions of Section 497 Cr.P.C. If bail is to be granted to every accused, even if charged with a non-bailable offence, without considering the merits of the case merely on the plea that every accused is presumed to be innocent unless proven otherwise, the very concept and purpose of drawing a line between bailable and non-bailable offences and various kinds of punishments, as prescribed by the law, shall stand frustrated. The discretion vested in the Court is to be exercised in a judicial fashion and in the light of the facts of each case. Where the prosecution collects enough material to constitute a reasonable ground connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail.

7. For what has been discussed above, the applicants have failed to make out a case for grant of bail and therefore the instant bail application is dismissed.

8. Needless to mention here that the observations made here and above are tentative in nature and shall not in any way affect the merits of case of either party at the trial and / or influence the mind trial Court at the time of deciding the case finally.

JUDGE