

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail. Appln. No.S- 439 of 2020

Date	Order with Signature of Hon'ble Judge
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For hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application

07.09.2020

M/s Syed Murad Ali Shah and Manzoor Hussain Shar Advocates for the Applicants

M/s Ghulam Shabbir Shar and Shamsuddin Rajper Advocates for the complainant

Mr. Khalil Ahmed Maitlo, DPG for the State

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Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicants/accused Abdul Ghaffar S/o Ghulam Qasim and Imdad Ali S/o Arz Muhammad, seek pre-arrest bail in case / crime arising out of FIR No.27 of 2020 registered at Police Station Bozdar Wada, District Khairpur for offences punishable under Sections 302, 34 PPC.

2. The facts of the prosecution case are that on 29.06.2020 at 1430 hours, complainant Abdullah Shar lodged his FIR at Police Station, Bozdar Wada, stating therein that his daughter namely Saira was married with Waheed Ali Shar, who used to maltreated her on trifling matters, hence on complaint of his daughter, he admonished his *son-in-law* to mend his behavior with his wife, which annoyed him. It is alleged that on 28.06.2020, he along with his brothers Sohrab and Zulfiqar went to visit the house of his *son-in-law* Waheed Ali, it was 2030 hours, when they reached there, the

electric bulbs were on and there they saw each Waheed Ali and his brother Abdul Ghaffar (applicant No.1) and their cousin Imdad Ali (applicant No.2) were present, as soon as the complainant asked his *son-in-law* Waheed Ali to mend his ways with his wife, on which the accused become annoyed and brought DBBL Gun and asked the complainant party to remain silent and in their presence accused Waheed and Ghaffar dragged Mst. Saira from the Cot and put her on the ground and started strangulating her by neck, due to scare of weapons, they remained silent and did not rescue Mst. Saira, consequently, Mst. Saira died at the spot due to strangulation and the accused persons escaped towards eastern side. Thereafter, the complainant party raised cries, which attracted the neighbourers, whom they narrated the facts and thereafter the dead-body was shifted to P.S Bozdar Wada, after post-mortem and interment, went to Police Station and lodged the report.

3. It is contended by learned counsel that the applicants/accused are innocent and have been falsely implicated by the complainant in the instant case; there is delay of about 1800 hours in lodgment of the FIR for which no plausible explanation has been furnished; that the presence of the complainant and witnesses is also doubtful at the place of incident; that as per post mortem report there is no mark of violence seen on the dead body of the deceased; that no active role is attributed to the applicants/accused in the commission of the offence; that there is contradiction in the medical as well as in the version of the complainant and 161 Cr.P.C statements of the witnesses; that the complainant and witnesses namely Sohrab and

Zulfiqar are brothers inter se, hence they are setup witnesses, their version cannot be believed as trustworthy and confidence inspiring; that there is *malafaide* on the part of the complainant to falsely implicate the applicants in the instant case. They lastly prayed that under the above stated circumstances, the interim pre-arrest bail granted to the applicants/accused vide dated 13.08.2020 may be confirmed on same terms and conditions.

4. Learned DPG for the State and learned counsels appearing for the complainant opposed for grant of pre-arrest bail to the applicants/accused by contending that the complainant in his FIR has specifically named the applicants with active role that applicant No.2 Imdad Ali holding DBBL Gun facilitated the co-accused Waheed Ali and Abdul Ghaffar while guarding over the complainant and witnesses, whereas, the applicant No.1 Abdul Ghaffar along with co-accused Waheed Ali dragged the deceased Mst. Saira from the Cot and strangulated her; that a young lady has been done to death, the offence entails capital punishment, therefore, the applicants/accused are not deserving for any extraordinary concession of pre-arrest bail; that the complainant and P.Ws have supported each other on all counts of the incident; that the ocular version is fully supported by the medical evidence; that the delay, if any, in lodgment of the FIR has been properly explained by the complainant that after the incident the dead body was shifted to Police Station and then to the Hospital and after interment he lodged the FIR.

5. I have heard the learned counsels for the applicants/accused, learned counsels for the complainant, learned Additional PG for the State and also gone through the record. Insofar as, the case of the applicant/accused No.2 Imdad Ali is concerned, he has been named in the FIR with the role that he was armed with DBBL Gun and facilitated the co-accused, neither he has caused any injury to the deceased Mst. Saira nor to the complainant or any of the witness, hence at the most his case is of mere presence at the place of incident. The guilt of the applicant/accused Imdad Ali would be determined at the time after recording evidence. In such situation, the applicant No.2 Imdad Ali has made-out a case for grant of pre-arrest bail. Accordingly, the interim pre-arrest bail already granted to applicant/accused Imdad Ali vide dated 13.08.2020 is confirmed on same terms and conditions.

6. Insofar as the case of applicant/accused No.1 Abdul Ghaffar is concerned, he has actively participated in the commission of the offence by dragging the deceased Mst. Saira from the Cot and strangulated her by neck along with co-accused Waheed Ali. The version of the complainant and witnesses as set out in the FIR as well as in 161 Cr.P.C is supported by the medical evidence. In that situation, it would be premature to say that the applicant No.1 being innocent has been involved in this case falsely by the complainant party on account of their family dispute. The enmity may be there, but it may not be reason for false involvement of the applicant No.1 in the present case. There appear reasonable grounds to believe that the applicant Abdul Ghaffar is guilty of the offence, which entails capital

punishment with which he is charged. In view of above, while considering the facts and circumstances of the case, it could be concluded safely that no case for grant of pre-arrest bail to the applicant No.1 Abdul Ghaffar is made-out. Consequently, the interim pre-arrest bail already granted to the applicant/accused Abdul Ghaffar vide order dated 13.08.2020 is hereby recalled and surety is discharged. The applicant/accused Abdul Ghaffar S/o Ghulam Qasim, who is present on interim pre-arrest bail is taken into custody and remanded to Central Prison Khairpur with direction that he shall be produced before the trial Court on each and every date of hearing in the aforesaid crime. Copy of this order be sent to learned trial Court for information.

7. The bail application stands dismissed in the above terms.

Judge

ARBROHI