

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Crl. Bail Application No. 1324 of 2018**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

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For hearing of bail application.

**24.12.2018**

Mr. Tajamul Lodhi, Advocate for applicant.

Ms. Seema Zaidi, DPG for the State.

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Behray Karam @ Amir Sahib has sought post arrest bail in crime number 519 of 2017 registered under sections 302, 109 and 34 P.P.C. at the Jackson police station in Karachi. Earlier, his post arrest bail application was turned down by the learned 8<sup>th</sup> Additional Sessions Judge, Karachi West on 11-9-2018.

2. Facts of the case are that one Afzal on 24-12-2017 registered the aforementioned F.I.R recording therein that the previous day i.e. on 23-12-2017 he received a phone call that his brother Momin Khan had been shot and killed by two unknown men on a motorcycle. After investigation, the police recommended that the F.I.R. be disposed of in "A" class. On 29-1-2017 the applicant was arrested as an accused.

3. I have heard the learned counsel for the applicant as well as the learned D.P.G. The complainant did not effect an appearance despite notices. My observations are as follows.

4. According to the police, call data record led them to arrest two brothers Rizwan and Shahid in the crime. What were the numbers that the call data record pertained too and how did the call data record reveal the involvement of the two brothers was not explained neither was the learned D.P.G. in a position to shed any light on the same. Be that as it may, the prosecution story is that Rizwan confessed in custody that he and his brother Shahid had gone to the house of the applicant where Shahid and the applicant had a conversation which conversation was not heard by Rizwan but that the applicant gave Shahid either Rs. 80,000 or Rs. 100,000. After the two brothers had left, Shahid told Rizwan that they had to murder Momin Khan. After this confession, the police also arrested the applicant who also confessed before the police.

5. Not a very meaningful investigation has been conducted as far as the involvement of the applicant in the case is concerned. The entire case against him is based on the confession of the co-accused and the applicant himself while in police custody. What is the evidentiary value of such a confession will have to be determined at trial however prima facie it appears that the same may not be admissible in evidence pursuant to the bar contained in Article 39 of the Qanun-e-Shahadat Order, 1984.

6. The applicant is not assigned the role of shooting Momin Khan but having hired the brothers as assassins because his daughter who was married to the complainant was not happy with her husband. No statement of the daughter confirming the same has been put before this Court to at least prima facie show that the assertion is correct. Neither does there appear to be any record of the bounty money. Whether the applicant instigated the two brothers to kill Momin Khan and whether they shared a common intention will have to be proved at trial after evidence is led.

7. It is a matter of record that the police after, what it claimed was a thorough investigation, had made a recommendation that the said case be disposed of in "A" class. That would indicate that the police was not in a position to determine who the killers were at that point even though it can be reasonably presumed that the call data record, which it claimed to have led them to the two brothers was available with them at that stage too. As mentioned above, the details of the call data record have not been produced in court nor has it been explained what the nexus of that call data record with the applicant or the two brothers was.

8. In view of the above, and upon a tentative assessment, the case of the applicant is one of further enquiry falling within the ambit of section 497(2) Cr.P.C. Above are the reasons for the short order of 25-10-2018 in terms of which the applicant was admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs. 300,000 and a P.R. Bond of a like amount to the satisfaction of the learned trial court.

JUDGE