

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-303 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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19.05.2023

Mr. Muhammad Ishaque Khoso advocate for applicants.

Mr. Noor Muhammad Soomro advocate for complainant.

Ms. Sana Memon, Assistant Prosecutor General along with IO/SIP Muhammad Khan Kaloi.

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MUHAMMAD IQBAL KALHORO, J.- On 14.05.2022 in compliance of order passed by learned 1st Additional Sessions Judge Badin u/s 22-A & B CrPC, current FIR was registered against applicants and other accused by complainant alleging that on 23.04.2022 his family had received threats of killing of his father from co-accused Mst. Ameena. On the same night when complainant party woke up at about 02:00 a.m. for fasting purpose, they found deceased Muhammad Hayat was not available on his bed. They went out in search of him through torchlight, and at some distance saw applicants armed with hatchets were holding his arms and co-accused Mst. Noor Khatoon and Gul Hassan were causing him fist and kick blows and he was raising cries. Complainant party tried to intervene to rescue the deceased, but applicants asked them to remain silent. Meanwhile, PW Muhammad Saleh arrived at the place of incident. Seeing him, the accused decamped and complainant party came over Muhammad Hayat and found him dead bleeding from multiple parts of his body.

2. On 25.04.2022 they submitted an application before SHO Badin for registration of FIR narrating the same facts but in vain. Thereafter, they approached the police authorities for the same purpose but when all the efforts of the complainant party got frustrated. They moved an application u/s 22-A & B CrPC and obtained order for registration of FIR.

3. Learned defense counsel has argued that on 25.04.2022 on the information of complainant, a report u/s 174 CrPC was recorded at Police Station in which none has been implicated by the complainant and simply information of death of the deceased and his body being found by the complainant party in the lands of one Abdul Sattar Memon was conveyed; in the postmortem no

injury was found by the Medico Legal Officer on the person of the deceased and hence cause of his death could not be determined. Subsequently, medical board was constituted, body was exhumed but since it was in decomposed condition, nothing about cause of his death could be determined and the Board submitted such report. Role attributed to applicant is only of holding arms of the deceased which in view of above facts requires further inquiry. He has relied upon PLD 2010 Supreme Court 585 and 2010 SBLR 96.

4. Counsel for the complainant and learned Assistant PG have opposed bail stating that in this case the police have not acted diligently, and with malafide FIR of the incident was not registered despite prompt information conveyed to SHO PS Badin; the applicants are influential persons and they also prevailed over Medico Legal Officer to get a wrong report from him disclosing no injury available on person of the deceased; an inquiry was conducted by the Crime Branch Badin in which when doctor's statement was recorded, he had admitted his mistake; applicants are nominated specifically in FIR with specific role and are not entitled to concession of bail.

5. IO, present, submits that as in postmortem, conducted on 24.04.2022, no violence over the dead body of the deceased was found and it appeared to be a case of natural death, the report was not registered but subsequently in compliance of the court order, FIR was registered as per verbatim of the complainant and accused were arrested on 23.11.2022. He has further submitted that on the person of deceased except a minor bruise over his eye no injury was found and even when medical board examined his decomposed body no fracture was detected.

6. I have considered submissions of the parties and perused material available on record. Prima facie, there is no medical evidence suggesting violence as alleged over the body of deceased or that he had sustained any hidden injury leading to his death as confirmed by the IO. IO has further stated that as there was no medical evidence supporting the allegations, FIR was not registered. Even in re-examination of the body by the Board, found in decomposed position, no fracture was found and reason of death of the deceased could not be determined. In FIR, allegations against the applicants are of holding arms of the deceased. But at the same time, they are also shown to be armed with hatchets. This statement of holding arms of the deceased prima facie

therefore requires further inquiry in that it is yet to be determined whether when a person is holding a hatchet in his hand, would he be in a position to effectively hold arm of a person rendering him motionless so much so that he would not be able to move and save himself, particularly when the accused who were inflicting blows to him were not even armed with any weapon. This fact coupled with the postmortem report suggesting no injury on the person of deceased induces certain questions in mind which requires evidence to show connection of the accused with the offence. Accordingly, this application is allowed and the applicants are granted post arrest bail subject to furnishing solvent surety in the sum of Rs.2,00,000/- (rupees two lac) each and PR Bond in the same amount to be executed before the trial court to its satisfaction.

7. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

Ali Haider

JUDGE