

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

Criminal Bail Application No.S-1388 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

14-06-2023

Mr. Muhammad Jamil Ahmed advocate for applicant.

Mr. Shahnawaz Brohi, advocate for complainant.

Ms. Sana Memon, Assistant Prosecutor General Sindh.

MUHAMMAD IQBAL KALHORO, J: - Complainant is a driver and has six brothers. One of his brothers Nek Muhammad, also a driver, was working with applicant as a contractor for operating tractor and excavator. Differences over commission between them cropped up over which they had a fight. On 09.06.2022 his brother was contacted on phone by applicant to come out of the house. His brother went out but did not return. In the night complainant and his elder brother mounted a hunt for his location. When at about 11.00 pm. they reached near Gata Factory near Mirza Bag, saw five persons including applicant mounting upon a person and strangulating him. Seeing complainant party they decamped on two motorcycles. The victim was identified by complainant, as his brother namely Nek Muhammad who was taken to hospital but was pronounced dead. Thereafter his body was taken to Shikarpur for burial, after which complainant appeared at PS and registered FIR as above.

2. Learned counsel in defense argues that there is unexplained delay of three days in registration of FIR; joint role has been attributed to the applicant; from nails and biting marks on the body of deceased, skin tissues etc. were found regarding which DNA profile was obtained which as far as applicant is concerned has been reported in negative, Call Data Record of witnesses does not support their presence on spot; even the Call Data Record of deceased shows that he was not available at the spot where from allegedly his dead body was recovered. He to support his arguments has relied upon the cases reported as 2011 SCMR 902, 2016 SCMR 1399, 2017 SCMR 366, 2022 SCMR 663 and 2020 PCrLJ Note 62.

3. On the other hand, learned counsel for complainant submits that applicant's name is mentioned in FIR with specific role. Delay occurred as deceased was taken to Shikarpur and after three

days (Teejho) the complainant returned and registered FIR. Report of Call Data Record is not final and needs deeper appraisal. The case is ripe for proceedings; on the last date of hearing all the witnesses were present but defense counsel sought adjournment. Learned A.P.G. Sindh has also opposed bail to the applicant stating that so far as DNA report is concerned it is irrelevant to the role of the applicant. The skin tissues were obtained from the biting marks on the body of deceased, the applicant is stated to have strangled him.

4. I have considered submissions of parties and perused material available on record including the case law. Applicant's name is mentioned in FIR with role of strangulating the victim. This allegation is *prima facie* supported by the post mortem report. Delay in registration of FIR has been properly explained as after death of deceased his body was taken to Shikarpur for burial. Complainant after three days (Teejho) returned and lodged the FIR. Further, I do not see any reason to disagree with learned Assistant P.G. that DNA report insofar as applicant is concerned is not relevant for the time being till evidence is recorded and he is assigned further role than strangulation. Merely on the basis of Call Data Record, the truthfulness of which with allied detail is yet to be subjected to the trial and appreciated as against the direct account of the eye witnesses, the applicants' case cannot be held to be of further inquiry.

5. It has not been explained, as the trial is ripe, why the witnesses were not examined on the last of hearing when they were present. But be that as it may, at bail stage only tentative assessment of the material is to be undertaken and from the *prima facie* assessment of material applicant appears to be involved in this case. In the circumstances, this application is dismissed. However, since the charge has been framed, the trial Court is directed to examine the material witnesses within a period of three months after which applicant would be at liberty to move a fresh bail application which, if filed, shall however be decided on its own merits.

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

JUDGE