

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.  
Crl. Bail Appln. No. S - 487 of 2024

Applicant : Mujeeb-ur-Rehman Jakhrani, through Mr. Habibullah G. Ghouri, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing : 30.10.2024.  
Date of Order : 30.10.2024.

ORDER

ARBAB ALI HAKRO, J.- Applicant Mujeeb-ur-Rehman son of Ubedullah *alias* Shah Jehan, by caste Jakhrani, seeks pre-arrest bail in Crime No.27/2023 of P.S Bahoo Khoso, District Jacobabad, for offence u/s 302, 311, 34, PPC, after dismissal of his such plea by the learned Additional Sessions Judge-II, Jacobabad vide order dated 17.8.2024.

2. The prosecution case, in brief, is that on 28.07.2023, a police posse led by complainant HC-616 Bhagio Khan Mirani of PS Bahoo Khoso, being on patrolling duty, at about 7.00 p.m. time when reached near the house of accused Mujeeb-ur-Rehman Jakhrani situated in village Ali Bux Jakhrani, Taluka Thul, District Jacobabad, heard fire shot reports and cries from the house of accused Mujeeb-ur-Rehman Jakhrani and when reached at the gate of house, saw accused Mujeeb-ur-Rehman and Iqrar, both sons of Ubedullah *alias* Shah Jehan Jakhrani, armed with T.T. Pistols, who were making fires upon a woman lying the ground and on seeing police the accused persons claimed that they were killing said woman Mst. Zarnaz, the wife of Mujeeb-ur-Rehman Jakhrani, declared her "Kari" with one Asif Talani, whereafter, both the accused persons fled away by scaling over the wall of the house and could not be apprehended despite being chased by the police. One person, namely, Illahi Bux Jakhrani and a woman named Sahib Khatoon, were then found near the dead body of Mst.Zarnaz, who disclosed to police that the above-named accused had killed the deceased, alleging her to be "Kari" with Asif Talani. The police party then returned to the police station, where HC Bhagio Khan registered an FIR on behalf of the State.

3. Learned Counsel for the applicant contends that the applicant is innocent and has been falsely implicated in this case under suspicion; that except police, no independent person is shown to have witnessed the alleged incident and even Asif Talani, with whom the deceased was alleged to be "Kari" and killed on such allegation, has neither been cited as witness nor even examined during investigation; that the story set forth in the FIR is unconvincing and unbelievable; that Illahi Bux and Mst. Sahib Khatoon cited as witnesses in the FIR, have sworn their affidavits, exonerating the applicant from the commission of offence; the case against the applicant requires enquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. He finally prayed for a grant of bail to the applicant. To support his submissions, learned counsel has referred to the case reported in **2009 SCMR 448**.

4. On the other hand, learned DPG opposed the bail application, contending that the name of the applicant is mentioned in the FIR along with his brother, co-accused Iqrar with the specific role of firing at the deceased; that PWs Illahi Bux and Mst. Sahib Khatoon, in their 164, Cr.PC statements recorded on 06.9.2023 have fully implicated the applicant; that this is a case of honour killing in which the deceased was undeniably killed in the house of the applicant, for which he has failed to offer any justifiable explanation, which shows that he is involved in the murder of his wife, Mst. Zarnaz, on the allegation of illicit terms with Asif Talani, therefore, is not entitled to concession of bail.

5. Heard learned counsel for the applicant, learned DPG for the State, and perused the material available on record.

6. The tentative appraisal of the material on record reveals that the present case was registered on behalf of the State. The applicant/accused is nominated in the FIR with the specific role of firing with a pistol at his wife, Mst.Zurnaz (deceased) after declaring her as "Kari" with Asif Talani. The incident occurred on 28-07-2023 at 1900 hours. It was reportedly witnessed by complainant HC Baghyo Khan, PC Abdul Jabbar and PC Ayaz Khan, who, while patrolling, reached the house of the applicant/accused and heard noises of firing and cries. Upon rushing inside the house, they saw applicant/accused Mujeeb-ur-Rehman and his brother Iqrar Jakhrani, both armed with pistols were firing at Mst. Zurnaz (deceased). The ocular account provided by the complainant is fully consistent with the medical evidence, which corroborates the cause of death as being due to firearm injury. The tragic loss of an innocent woman's life

under the pretext of honour killing highlights a grave issue that continues to plague society. Perpetrators often justify honour killing as an act of "Ghairat", which is a severe violation of human rights and has far-reaching consequences on the social fabric of Pakistan. Such heinous crimes are not only morally reprehensible but also legally indefensible, and it is the collective responsibility of all stakeholders to ensure that such crimes are not tolerated and that justice is served for the victims. Hon'ble Supreme Court of Pakistan, in the case of **Muhammad Akram Khan v. The State**, **PLD 2001 SC 96**, has observed that taking a life in the name of "Ghairat" is against the law and immoral, and no one should be given the authority to do so. So-called honour killing is just murder (Qatl-i-Amd), which is forbidden by both the law, religious teachings, and the supreme law of the land. The relevant para from the said judgment is reproduced as under:-

"Legally and morally speaking, no body has any right nor can any body be allowed to take law in his own hands to take the life of anybody in the name of "Ghairat". Neither the law of the land nor religion permits so-called honour killing which amounts to murder (Qatl-i-Amd) simpliciter. Such iniquitous and vile act is violative of fundamental right as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan which provides that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution."

7. Reverting to the affidavits of Mst.Sahib Khatoon (mother of the deceased) and Illahi Bux (brother of the deceased), no doubt, have sworn their affidavits before this Court, raising no objections to granting bail to the applicant, but the offence *prima facie* appears to have been committed on the pretext of honour which has not been declared as compoundable under Section 345 Cr.P.C. Even, the mother and brother of deceased were not present at the time of the alleged crime, and they are not eye-witnesses of the incident, therefore, at this juncture, filing affidavits is tantamount to damaging the prosecution evidence; therefore, the same is worth no consideration. The reliance in this regard is placed upon the case reported as **Naseer Ahmed v. The State (PLD 1997 SC 347)**, wherein the Hon'ble Supreme Court of Pakistan has held as under:-

"We do not propose to make any comments with regard to the statements of these two witnesses mentioned above for the reason that; they would still be examined in the trial Court as witnesses where they would be subjected to cross-examination but this fact alone is not enough to falsify other material on the record i.e. statements of four inured eye-witnesses implicating the petitioner, the motive alleged against him, absconson, recovery of five empties of pistol of .30 bore from the stop before the recovery of pistol from the petitioner and the positive report of Ballistic Expert. At the time of hearing of bail application Court is supposed to do tentative assessment of the material

available on record, which is different from final appraisal and evaluation of evidence which is to be done by the trial Court which has to record evidence of witnesses. A trend has developed now a days that eye-witnesses sometimes take a somersault and give statements which are different from prosecution case and sometimes file affidavits also at the stage of hearing of bail applications of accused persons with intention to creating doubt in the case of prosecution to enable the accused to get bail. The Courts have to be very careful in such cases and bail applications are disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the trial Court, it is the mind of the Court which is to be satisfied where about-turn of some eye-witnesses in the manner stated above takes up the whole prosecution case from the point of view of credibility of the remaining material. In that respect each case is to be decided on its own merits."

8. Moreover, the killing of a woman on the pretext of honour was held un-Islamic, unconstitutional and an offence against the State and society. Reliance is placed on the case of **Khadim Hussain, and another vs The State** reported as **PLD 2012 Balochistan 179**, wherein it was held that:

I have given my anxious consideration to the arguments of the respective parties and perused the record. I have noticed in a number of cases that the killing of innocent wife, sister and other female relatives, on the allegation of 'siyahkari' has become a routine practice, rather a fashion, and it is a high time to discourage such kind of unwarranted and shocking practice, resulting in double murder in the name of so-called honour killing. I am not impressed by the contention of learned counsel for the applicants that according to the prosecution's own showing, the occurrence is the result of 'siyahkari', as such the applicants were liable to be enlarged on bail. It is true that people do not swallow such kind of insult, touching the honour of their womenfolk and usually commit murder of alleged 'siyahkar' in order to vindicate and rehabilitate the family honour, but it is equally true that no one can be granted licence to take law of the land in his own hands and start executing the culprits himself instead of taking them to the Courts of law. The murder based on 'Ghairat' does not furnish a valid ground for bail. Killing of innocent people, especially women on the pretext of 'siyahkari', is absolutely un-Islamic, illegal and unconstitutional. It is worth mentioning that the believers of Islam are not even allowed to divorce them without establishing their accusation. We profess our love for Islam, but ignore clear Qur'anic Injunctions regarding the rights of women. The Holy Qur'an in Sura XXIV in Sura (NUUR) Verses 4 says:

"And those who launch a charge against chaste women and produce not four witnesses, (To support their allegation),--- Flog them with eight stripes; and reject their evidence even after: for such men are wicked transgressors;---"

9. As mentioned above, the occurrence was witnessed by independent persons belonging to the police department. Nothing has been brought on record to show any ill-will or any malafide on the part of the complainant to falsely involve the applicant/accused with the commission of the murder of his wife, which is an essential requirement for the grant of pre-arrest bail. In this regard, I am fortified with the case law of the Hon'ble Supreme Court of Pakistan reported as **2019 SCMR 1129**, wherein it was held as under:-

"Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is the diversion of the usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation----the principles of judicial protection are being faithfully adhered to till date. Therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law."

10. Prima facie, sufficient evidence is available on the record to connect the applicant/accused with commission of the crime. The offence also falls within the prohibitory clause contained in subsection (1) of section 497 Cr.P.C, which disentitles the applicant for grant of bail.

11. In view of the above circumstances, I am of the considered opinion that the applicant has failed to make out his case for the grant of extraordinary relief of pre-arrest bail. Therefore, the instant bail application was dismissed by a short order dated 30.10.2024. Above are the reasons for the said short order.

12. Needless to mention here that the observations made hereinabove are tentative and would not influence the trial Court while deciding the case of the applicant on merits.

JUDGE

**Qazi Tahir PA/\***