

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**1<sup>st</sup> Criminal Bail Application No.S-715 of 2019**

**Ghulam Nabi Kharos**

V/S

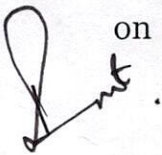
**The State**

Applicant:	Through Mr. Ahmed Bux Abro, Advocate
Complainant:	None present for the Complainant
State:	Through Mr. Ali Anwar Kandhro, Additional Prosecutor General.
Date of Hearing:	06.02.2020
Date of Decision:	06.02.2020

**ORDER**

**ZAFAR AHMED RAJPUT, J.-** Through instant Criminal Bail Application, applicant Ghulam Nabi son of Abdul Latif Kharos seeks post arrest bail in Crime No.15 of 2011, registered at Police Station Usman Essani at Bado under sections 302, 364, 337-J, 147, 148, 120-B P.P.C. His earlier application for grant of bail bearing No.51/2019 was heard and dismissed by the learned 1<sup>st</sup> Additional Sessions Judge / M.C.T.C, Shikarpur vide order dated 16.12.2019.

2. Briefly stated facts of the prosecution case are that on 04.04.2011, complainant Nizamuddin son of Muhammad Sallah Kharos lodged the aforementioned F.I.R., stating therein that on 01.04.2011, he alongwith his sons Akhtiar, Asghar Ali and brother Nazaruddin were present in their house when accused Altaf Hussain, Aijaz, Nisar and two unidentified accused called his son Asghar Ali out from house and took him to a hotel, however, his said son did not come back till night, hence they went to accused Nisar and enquired about his son, who disclosed that his son after leaving hotel proceeded to Larkana. It is further alleged that the complainant made search of his son but found no clue and then on 03.04.2011, the dead body of his said son was found from Sonwah



watercourse and after postmortem and burial of his son's dead body he lodged the aforementioned F.I.R.

3. Learned counsel for the applicant states that the applicant/accused is innocent and has falsely been implicated in this case; that the applicant was unaware of the registration of the case and he was performing his daily life pursuit in his village, but police never investigated him; that the applicant is relative of the complainant and co-accused, but he was not nominated in the F.I.R. by name, which was lodged with un-explained delay of three days; that the applicant was implicated by the complainant in his further statement recorded on 14.04.2011 after ten days of the lodgement of the F.I.R.; and since the accused is relative of the complainant it is not possible that he would have not identified him on the day of the alleged incident, hence false implication of the applicant cannot be ruled out; that the case of applicant falls within the ambit of further enquiry. In support of his contentions, learned counsel for the applicant relied upon the case of Muhammad Waqas v/s. The State (2017 P.Cr.L.J. Note 50), Sohno Bullo v/s. The State (2012 P.Cr.L.J.986) and Muhammad Bilal v/s. The State and another (2010 MLD 766).

4. On the other hand, learned Additional Prosecutor General contends that the nominated co-accused have already been convicted by the Trial Court and awarded sentence to suffer Life Imprisonment vide Judgment Dated 14.11.2014; the applicant was arrested on 01.11.2019 and it is matter of record that he remained fugitive from law for more than eight years; hence he is not entitled to bail.

5. I have considered the submissions of the learned advocate for the applicant, learned Additional Prosecutor General and have gone through the material available on the record.

6. It is an admitted position that present applicant-accused is not nominated in the F.I.R. by name in this case of blind murder. It is also matter of record that accused is caste fellow and relative of the complainant. The complainant has implicated the accused in his further statement recorded by the Investigating Officer on 14.04.2011 after ten days of the alleged F.I.R. wherein he stated that out of two unknown accused persons one of them was present accused. It is strange that the

complainant being relative did not identify him on the day of alleged occurrence and thus failed to nominate him in the F.I.R. with name, which was recorded by him even with delay of three days. Belated examination of witness by the police without furnishing any plausible explanation is always fatal to the prosecution case and such statement of prosecution witness is not to be relied upon without any strong corroboration. In such circumstances, reasonable ground exists that the applicant has been implicated after due deliberation and consultation and thus possibility of his false involvement cannot be ruled out. It may further be observed that abscondence disentitles a person from grant of bail, but the rule is not absolute and there are exceptions, one of which is that if an accused is entitled to grant of bail as a matter of right under sub-section (2) of Section 497 Cr.P.C. then it is not to be refused. In the instant case the guilt of the present accused requires further enquiry as envisaged under sub-section (2) of Section 497 Cr.P.C. Accordingly, the bail application is allowed and the applicant is directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Hundred Thousands only) and P.R. Bond in the like amount to the satisfaction of the learned Trial Court.

Needless to mention here that observations made hereinabove are tentative in nature and shall not influence the Trial Court for deciding the case of the applicant on merits; the Trial Court however, is at liberty to cancel the bail of the applicant-accused in case he misuses the concession of bail after giving him requisite notice.

  
**JUDGE**