

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

1st Cr. Bail Appln. No.D- 26 of 2019.

Date of hearing	Order with signature of the hon'ble Judge
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1. For orders on objection objections as flag A.
2. For hearing of bail application.

18.02.2020.

Mr. Athar Abbas Solangi, advocate for the applicant.

Mr. Waqar Ahmed Chandio, advocate for the complainant.

Mr. Ali Anwar Kandhro, Addl. D.P.G.

ORDER.

SHAMSUDDIN ABBASI-J.- Through this application, applicant Meeral Umarani seeks post arrest bail in Crime No.33 of 2018 registered at P.S City Jacobabad Distt: Jacobabad, for an offence under Sections 302, 449, 109, 34 PPC RW Section 6/7 ATA 1997. His earlier application for grant of bail bearing No.15 of 2019 in Special Case No.01 of 2019 was dismissed by learned trial Court vide order dated 15.5.2019.

2. Brief facts of the prosecution case are that on 01.06.2018 complainant Inspector Ghazanfar Ali Pathan SHO P.S City Jacobabad lodged FIR on behalf of State stating therein that on 30.5.2018 at 6.00 p.m he received order dated 29.5.2018 passed by learned 1st Additional Sessions Judge, Jacobabad in Petition filed by Mst.Sanam for registration of case in which she disclosed that accused Liaquat Ali, Shafqat Ali and Meeral would cause her murder on the dispute over landed property for which report was called by the Court on 02.6.2018. It is further alleged that on 31.5.2018, complainant alongwith his staff HC Ashique Hussain and PC Ghulam Akbar in police uniform duly armed with official weapons left the Police Station in Government vehicle with driver PC Aelaz Khan for patrolling vide Roznamcha Entry No.12 at 1600 hours. After patrolling at different places, they were standing at the Bus-stand at 1700 hours, where they received information that Mst.Sanam Umrani has been murdered by accused Liaquat Ali, Shafqat Ali and Meeral alongwith three unknown accused in collusion to each other by firing with T.T pistols while entering into her house. On receipt of such information, police party rushed to the pointed place and reached at the house of

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Mst.Sanam Umrani in Dinghar Muhalla Jacobabad at 1720 hours and saw that Mst.Sanam had sustained firearm injuries on her chest and thigh, the blood was oozing and she was found dead. Complainant prepared the memo of vardat, dead body visit, recovery of empty bullets and blood stained earth in presence of mashirs HC Ashique Hussain and PC Ghulam Akbar due to non-availability of private mashirs. The dead body was sent for postmortem through HC Ashique Hussain while complainant came at the Police Station and lodged FIR to the above effect.

3. After registration of FIR, investigation followed and present applicant Meeral was arrested and sent up to stand trial before the trial Court.

4. It is contended by learned counsel for the applicant that the applicant is innocent and he has been falsely implicated in this case in the background of enmity over landed dispute which is also admitted in the story of petition filed by deceased Mst.Sanam; the FIR was lodged on behalf of the State into an unseen incident thus admittedly complainant and mashirs did not see active part of killing lady to any body; there is delay of one day in lodgment of FIR; in the statements under Section 164 Cr.P.C, P.Ws Mst.Nayab and Mst.Farhat @Mishal have alleged that accused Shafquat Ali caused firearm injuries to deceased Mst.Sanam when applicant/accused Meeral duly armed with pistol and others were standing at the place of occurrence, thus there is only role of mere presence at the occurrence is alleged against present applicant and no other overt act is assigned to him. He further contended that there is conflict between FIR and 164 Cr.P.C statements of above two prosecution witnesses hence it is yet to be determined at the trial as to which version is correct; admittedly both lady P.Ws happen to be real sisters of deceased Mst.Sanam hence they are interested, enimical and set up witnesses, false implication of present applicant can not be ruled out. On all these submissions, learned counsel for the applicant urged that the prosecution case against the present applicant calls for further enquiry and he is entitled to the concession of bail.

5. On the other hand, learned D.P.G duly assisted by learned counsel for the complainant submits that applicant/accused duly armed with pistol was in company of co-accused who committed murder of Mst.Sanam thus he has actively participated in the commission of crime by facilitating co-accused Liaquat Ali who

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caused murder of Mst.Sanam. P.Ws Mst.Farhat and Mst. Nayab in their statements U/S 164 Cr.P.C have also implicated present applicant Meeral while stating that he duly armed with pistol was available at the scene of offence; there is strong motive against accused, they killed innocent lady, therefore, they are not entitled for bail.

6. We have heard learned counsel for the applicant, learned counsel for the complainant, learned D.P.G for the State and perused the material available on record.

7. Admittedly the FIR has been lodged by complainant Inspector Ghazanfer Ali Pathan SHO P.S City Jacobabad on behalf of State into an unseen incident of killing of Mst.Sanam. Admittedly there is standing enmity between the parties over landed dispute and it is settled proposition of law that enmity is a double edged weapon which cuts both ways. Statements under Section 164 Cr.P.C of P.Ws Mst.Farhat and Mst.Nayab were recorded in which although they have implicated present applicant Meeral but only role of mere presence at the occurrence duly armed with pistol is alleged against him and no any other overt act is attributed against him while role of causing firearm injuries is assigned to only co-accused Liaquat Ali and in their statements, nowhere it is mentioned that police party reached their house as stated in the FIR. Admittedly both the P.Ws namely Mst.Farhat and Nayab are real sisters of deceased Mst.Sanam and their presence has not been shown by complainant at the scene of offence in the FIR. Co-accused Liaquat Ali has already been admitted to bail by this Court vide order dated 10.7.2019 and the case of present applicant is almost on the same footings. As regards sharing common intention is concerned, the guilt of accused in the commission of offence is yet to be determined at the trial. In the case of **Yaroo v. The State (2004 SCMR 864)**, under similar circumstances, the Hon'ble Apex Court held as under:

"We have noticed that the allegations against the accused are of general nature. No injury whatsoever has been attributed to him to the deceased. He is in jail for the last more than one year. Keeping in view the aforesaid facts and circumstances of the case, this petition is converted into appeal and the petitioner is admitted to bail in the sum of Rs.50,000/= with two sureties in the like amount to the satisfaction of the trial Court."



8. In view of above, it appears that at this stage present applicant has made out his case one of further enquiry. Accordingly, applicant Meeral is granted post arrest bail subject to furnishing solvent surety in the sum of Rs.500,000/= and P.R bond in the like amount to the satisfaction of trial Court.

9. It is needless to say that observations made hereinabove are tentative in nature and confined to this bail matter only which shall not influence the mind of learned trial Court while deciding the fate of accused/applicant at trial.



JUDGE

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18-02-2020
JUDGE