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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 286 of 2013.

Date of hearing 16.07.2015.	Order with signature of Judge
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For Hearing.

Messrs Ghulam Ali A. Samtio, and Ahsan Ahmad Quraishi,
Advocates for applicant.

Mr. Asif Ali Abdul Razzak Soomro, Advocate for
complainant.

Mr. Khadim Hussain Khooharo, D.P.G.

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For the reasons to be recorded later on, the bail application  
stands dismissed.

  
Judge



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

Cr. Bail Applications Nos. S-286 & S-608 of 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

Messrs. Ghulam Ali A. Samtio and Ahsan Ahmed Qureshi, advocates for applicant Zakir Hussain Kalhoro in Cr. Bail Application No. S-286 of 2013.

Messrs. Inayatullah G. Morio and Habibullah Ghouri, advocates for applicants Sahib Khan Chandio alias Kuraro and Rahib Hulio, respectively in Cr. Bail Application No. S-608 of 2013.

Mr. Asif Ali Abdul Razak Soomro, advocate for complainant Saeed Ahmed in Cr. Bail Application No. S-286 of 2013.

Mr. Altaf Hussain Surahyo, advocate for complainant Saeed Ahmed in Cr. Bail Application No. S-608 of 2013.

Mr. Khadim Hussain Khooharo, D.P.G.

Date of hearing: 16-07-2015

**ORDER**

**ZAFAR AHMED RAJPUT, J:** - By this common Order, I intend to dispose of two Criminal Bail Applications being No. S-286 of 2013 and S-608 of 2013, filed on behalf of applicants/ accused, namely, Zakir Hussain Kalhoro and Sahib Khan Chandio alias Kuraro & Rahib Hulio, respectively, who are facing trial in Crime / F.I.R. No. 60 of 2012, lodged at Police Station Mahi Makol, District Kamber-Shahdadkot, under sections 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and 427, P.P.C.

2. According to F.I.R. on 23.10.2012 complainant Saeed Ahmed, along with his father Masood Ahmed, aged about 76/77 years and relatives Jan Muhammad and Muhammad Siddique were coming back to their village Haji Saadullah Chandio from Larkana in a car when at about 6:00 p.m. they were intercepted at Sangah curve near Khair Shah by six persons with open faces; out of whom two

*[Handwritten signature]*  
22/07/2015



were armed with kalashnikovs, two with repeaters and two with pistols. Accused persons having repeaters and pistols fired straight on the car which hit Masood Ahmed; thereafter, they overpowered the complainant party and robbed (1) Nokia mobile phone 1112 worth Rs. 35,000/= and one golden ring worth Rs. 60,000/= from complainant (2) one Nokia mobile phone 1110 and cash amounting to Rs. 2,730/= from Jan Muhammad (3) one Casio watch and cash amounting to Rs. 2,210/= from Muhammad Siddique (4) cash amounting to Rs. 13,200/= from Masood Ahmed and then they went away. Masood Ahmed who sustained injuries on his neck and crossed from back side succumbed to the injuries; they brought his dead body at Taluka Hospital, Kamber, where the complainant leaving the P.Ws at dead body left for police station and lodged the F.I.R.

3. Heard the learned counsel for the applicants, complainant and D.P.G. and perused the material available on record.

4. Mr. Ghulam Ali A. Samtio, learned counsel for the applicant/ accused Zakir Hussain Kalhoro in Cr. Bail Application No. S-286 of 2013 has contended that the applicant is innocent and has falsely been implicated in the case; that neither the name of applicant nor his features or body description has been given by the complainant and P.Ws in the F.I.R. or in their statements recorded under section 161 Cr. P.C. and he has been implicated in this case on the basis of extra-judicial confession allegedly made by him with co-accused persons in presence of witnesses Rahim Ali and Khan Muhammad while sitting in a hotel, as such, prosecution has improved the case through further statements and the case of prosecution being doubtful, requires further enquiry. The learned counsel has placed his reliance on the case of Bago vs. The State (2011 MLD 685) to substantiate the said contention. Learned counsel has further contended that the applicant after his arrest on 14.12.2012 was put in an identification parade after four days of his arrest on 18.12.2012, thus possibility cannot be ruled out that in





the intervening period of detention of applicant in police station, the witnesses might had seen him before holding of identification parade, more over identification parade looses the sanctity when no role has been attributed to the applicant during commission of offence. In this regard, learned counsel has placed his reliance in the cases of Waqar Shah vs. The State (2012 P. Cr. L J 866), Mithal vs. The State (2005 P. Cr. L J 630), Badly and another vs. The State (2004 P. Cr. L J 157), Imamdine vs. Pathan and 3 others (2001 P. Cr. L J 1892 and Liaqat Ali vs. The State (2012 P. Cr. L J 2317). The learned counsel has also contended that as per prosecution case no fire was made from kalashnikov; therefore, recovery of alleged kalashnikov from applicant has no value in the eye of law, while the mobile phone allegedly robbed from the complainant and shown to have recovered from the possession of applicant being a commonly used mobile phone can easily be purchased from market and foisted upon the applicant; therefore, it is a fit case for further enquiry and the applicant is entitled for the grant of bail.

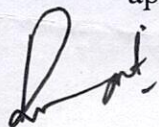
5. Mr. Inayatullah G. Morio, learned counsel for the applicant/ accused Sahib Khan Chandio in Cr. Bail Application No. S-608 of 2013, while adopting the arguments of Mr. Ghulam Ali A. Samtio advocate, has maintained that the applicant has falsely been implicated in the case by the complainant with mala fide intention and ulterior motive; that the name of applicant does not appear in the F.I.R. though the village of applicant is situated within the limit of 4/5/ kilometers; that there is no allegation that the applicant fired at the deceased or any prosecution witness at the time of occurrence; that extra-judicial confession has no value in the case of punishable with death as Qisas; therefore, the question of applicant's guilt would require further enquiry. In support of his contention, the learned counsel has relied upon the cases of Nisar Ahmed vs. The State and others (2014 SCMR 27) Khubaib Ahmed vs. The State (1992 SCMR 398) and Zahoor Ahmed Alias Zahoori vs. The State (1994 P. Cr. L J 335).



6. Mr. Habibullah Ghouri, learned counsel for the applicant/ accused Rahib Hulo in Cr. Bail Application No. S-608 of 2013 has added that the applicant is not nominated in the F.I.R., and he has subsequently been implicated in the case on the basis of statements of two witnesses who are admittedly not the eye witnesses. Learned counsel, in support of his arguments, has relied upon the case of Muhammad Waseem vs. The State and others (2012 SCMR 387)

7. On the other hand, Mr. Asif Ali Abdul Razak Soomro, learned counsel for the complainant in Cr. Bail Application No. S-286 of 2013, while opposing the application for grant of bail to applicant Zakir Hussain Kalhoro has contended that the applicant was seen by the complainant and eye witnesses at the occurrence and subsequently he was identified by the eye-witnesses in identification parade conducted by the concerned Judicial Magistrate and during investigation the I.O recovered from him the robbed mobile phone of the complainant; as such, there appear reasonable grounds for believing that the said applicant is involved in a heinous offence of highway robbery in which the father of complainant lost his life; therefore, applicant is not entitled to grant of bail.

8. Mr. Altaf Hussain Surahyo, learned counsel for the complainant in Cr. Bail Application No. S-608 of 2013 has opposed the grant of bail to applicants, namely, Sahib Khan Chandio alias Kuraro and Rahib Hulo on the ground that both the applicants have been identified by the complainant and eye-witnesses in the identification parade as the applicants, who along with other four accused persons, equipped with arms made show of force for the purpose of taking away the properties of complainant party attacked them and thus committed "haraabah", which is punishable under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 with death imposed as "hadd"; therefore, the applicants are not entitled to the grant of bail, as offence against the applicants is covered by the prohibitory clause of section 497 Cr. P.C.





9. Learned D.P.G. has opposed the bail applications on the grounds taken by the learned counsel for the complainant.

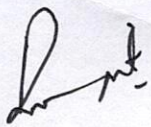
10. The perusal of record reveals that alleged incident took place on 23.10.2012 and F.I.R. of the case was lodged within four hours, wherein the names of culprits are not mentioned. During investigation police recovered seven crime empties of 30 bore pistol and five crime empties of 12 bore repeator from the place of incident. The arrest of present applicants/ accused, along with co-accused Bakht and Ali Muhammad took place on 14.12.2012 and police recovered:

- (i) One kalashnikov with magazine and 20 bullets from accused Zakir Hussain.
- (ii) One repeator 12 bore with 5 cartridges of 12 bore from accused Sahib Khan Chandio alias Kuraro.
- (iii) One pistol 30 bore with magazine and 5 bullets of 30 bore from accused Rahib Hulio.
- (vi) One repeator 12 bore with 3 cartridges of 12 bore, one mobile phone robbed from P.W. Jan Muhammad and Casio watch robbed from P.W. Muhammad Siddique from accused Bakht.
- (v) One pistol 30 bore with magazine and 4 bullets of 30 bore from accused Ali Muhammad.

**As per report of Forensic Science Laboratory (FSL):**

- (i) Two 12 bore crime empties were fired from the repeator shot gun, recovered from the possession of applicant/ accused Sahib Khan Chandio alias Kuraro, are **Similar**.
- (ii) Three 30 bore crime empties were fired from 30 bore pistol recovered from applicant/ accused Rahib Hulio, are **Similar**.
- (iii) Three 12 bore crime empties were fired from the repeator shot gun, recovered from the possession of co-accused Bakht, are **Similar**.
- (iv) Four 30 bore crime empties were fired from 30 bore pistol recovered from co-accused Ali Muhammad, are **Similar**.

11. No doubt, the name of the applicants do not appear in the F.I.R., that has been lodged against unknown accused persons whose faces were open; therefore, had there been any ill-will against the applicants, the complainant would have

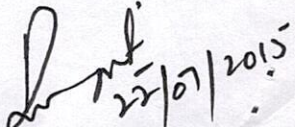




nominated them in the F.I.R. by name. The applicants/ accused were subsequently identified by the complainant and eye-witnesses, among 50 dummies, in identification parade conducted by the Judicial Magistrate. The complainant and eye-witnesses have no enmity whatsoever to involve the applicants in a criminal case. There appears no reason to expect that the complainant would exonerate the real culprits of his father's murder and implicate the innocent persons. Lapse on the part of complainant and eye-witnesses for non-attributing the role of applicants during commission of offence in identification parade alone cannot make the case against the applicants of further enquiry as the prima facie reasonable grounds are available to believe that applicants are guilty of the offence of "Haraabah", which is covered by the prohibitory clause of section 497 (1) Cr. P.C. Offences like robbery/dacoity/extortion are frequently reported to have been committed without any restriction in urban and rural areas; not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of insecurity amongst public at large. The case-law cited by the learned counsel for the applicants has no nexus and quite distinguishable with the facts and circumstances of the case in hand; therefore, I dismiss these criminal bail applications. However, the learned trial Court is directed to expedite the trial and conclude the same preferably within a period of three months.

12. Needless to mention here that the observations made herein above are tentative in nature and would not influence the trial Court while deciding the case of the applicants/ accused on merits.

13. By my short order dated 16.07.2015, the instant Criminal Bail Applications were dismissed and above are the reasons for the said order.

  
22/07/2015  
JUDGE