

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Bail Appln. No. S- 222 of 2013.

Date of hearing 19.07.2013.	Order with signature of Judge
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Mr. Ghulam Ali J. Rind, Advocate for applicant.  
Miss. Shazia Surahyo, State Counsel.  
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**Salahuddin Panhwar, J:** Through instant application, the applicant Mukhtiar Ali seeks post arrest bail in Crime No.10/2013, of P.S Miranpur Buriro, under Section 302 P.P.C.

2. Succinctly, relevant facts are that, complainant Akhtiar Ali lodged F.I.R, alleging therein that, he alongwith his uncle Lutuf Ali and cousin Jameel Ahmed used to reside in Deggi Buledi, taluka Garhi Khairo; that about 4/5 years back his sister Haseena had married with Mukhtiar Ali and was residing adjacent to the house of complainant alongwith her husband. On 23.4.2013, at about 5.00 a.m. complainant heard cries of Mst. Haseena; he alongwith his uncle and cousin rushed towards there and in the light of bulbs they saw applicant having T.T pistol in his hand, and he while seeing complainant and witnesses at the door of his house disclosed that he has declared his wife Haseena as "Kari" with Ali Bux Buledi and caused straight fire shots upon Mst. Haseena; and run away alongwith pistol. After departure of accused, the complainant party found Mst. Haseena was lying dead, having injuries. The complainant then narrated the incident to their Nekkards and also informed police over mobile phone; the police taken into custody the dead body, sent it to the hospital for postmortem.

3. Learned counsel for the applicant, *inter-alia*, contended that applicant has been implicated at the instance of police; alleged incident is un-seen, inspite of that police officials managed and compelled the complainant and witnesses for lodgment of F.I.R and recording their statements; F.I.R is delayed about two days. It is matter of record that dead body was taken away by police on 23.4.2013, subsequently postmortem was conducted on same date and inspite of that F.I.R was



lodged on 24.4.2013. This reflects that complainant, witnesses and police officials were having no clue of accused persons but subsequently progress made in the instant case is only the brain-child of police. Learned counsel further contended that complainant and witnesses had sworn affidavits before the trial Court, wherein they exonerated the applicant, but such affidavits were not considered by the trial Court.

4. Conversely, State counsel contended that affidavits of complainant and witnesses at bail stage cannot be considered; complainant and witnesses are close relatives of the applicant, therefore, they have resiled from their evidence in order to oblige the applicant. In support of his contention he has relied upon case of *Naseer Ahmed v. The State* (PLD 1997 Supreme Court 347).

5. Heard learned counsel and perused the record.

6. After careful consideration of contention raised by respective counsel and examination of available record, it reveals that it is case of prosecution that Mst. Haseena was murdered on the pretext of "Karo-Kari", on 23.4.2013 at 5.00 a.m, by the applicant while causing T.T pistol fire shots; recovery of dead body was effected from the house of applicant who is the husband of deceased, and admittedly complainant (brother of deceased) and witnesses are cousins of the applicant. It is further surfaced that complainant lodged F.I.R against applicant wherein he categorically alleged that his cousin accused Mukhtiar Ali on the pretext of "Karo-Kari" caused murder of his sister Haseena. Thereafter, they called police at the place of occurrence, shifted the dead body to civil hospital, where postmortem was conducted; after burial ceremony they registered F.I.R. Besides; eyewitnesses have also implicated applicant in their 161 Cr.P.C. statements, recovery of pistol was effected at the instance of applicant and mashirnama of inspection of place of incident reveals that three empty cartridges were also found. Such version is in corroboration with medical evidence and it is not disputed that deceased Mst. Haseena was murdered with firearm injury; place of incident is house of applicant and time of alleged offence is 5.00 a.m, hence it is suffice to say that except ocular



evidence, circumstantial evidence is also connecting the applicant in the instant crime with reasonable grounds.

7. In above circumstances filing of affidavits by complainant and witnesses wherein they have categorically resiled from their earlier evidence is apparently favour to the applicant/accused, as in their affidavits they have taken plea that instant case is false, but they have not shifted responsibility that who has caused the murder of deceased Mst. Haseena, when relation ship of complainant and witnesses with the applicant is very close and there is now common phenomena that in cases of "Karo-Kari" almost all close relatives are normally against the lady, who is allegedly implicated in such type of situation. This trend is increasing day-by-day and has negative effect upon the whole society and in any way cannot be termed as ordinary crime. On this proposition, in case of Daimuddin and 2 others v. The State (2010 M L D 1089), it is held as under:

*"Karo-Kari" is crime which is a blot not only on fair name on Sindh a land of Sufis' and Saints which has always overflowed with milk of lumen kindness. It has in the unity of nations, always sullied Pakistan and Muslim Society as a whole. This is a case where conspiracy of murder is floating on the surface."*


8. Thus, prima facie intention of filing of affidavits in instant case at bail stage is not bringing the real truth, but it is evident that they have attempted to favour the applicant/accused, therefore, such type of affidavits cannot be considered while deciding the bail application. However, it is settled principle of law that affidavit(s) at bail stage has no evidentiary value, on this analogy, Hon'ble Supreme Court in case of *Naseer Ahmed v. The State* (P L D 1997 Supreme Court 347), has held that:

*"At the time of hearing of bail application Court is supposed to do tentative assessment of the material available on the 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 nowadays that eye-witnesses some times take a somersault and give statements which are different from prosecution case and*



*some times file affidavits also at the stage of hearing of bail application of accused persons with intention of 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 see that 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 shakes up the whole prosecution case from the point of view of credibility of the remaining material."*

9. In view of above, the applicant has failed to bring his case within the purview of Subsection (2) of Section 497 Cr.P.C., thus he is not entitled for concession of bail. Consequently, by short order dated 19.07.2013, the bail application was dismissed and these are the reasons for the same. However, the observations made hereinabove are tentative in nature and will not prejudice <sup>the</sup> case of either party at trial.

  
Judge 24/7/2013

Ansari\*