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## ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Bail Appln. No. S- 440 of 2012.

Date of hearing	Order with signature of Judge
31.07.2013.	

Mr. Rafique Ahmed K. Abro, Advocate for applicant.  
Mr. Habibullah Ghouri, Advocate for complainant.  
Miss. Shazia, State Counsel.

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Through instant application, applicant Abdul Wahid alias Najam Golo seeks post arrest bail in Crime No.47/2012, registered with P.S Thull, under Sections 302, 201, 34 P.P.C.

2. Precisely, the relevant facts of the case are that complainant Nek Mohammad lodged F.I.R, wherein he contended that deceased Faiz Mohammad had monetary dispute with the applicant, hence applicant was issuing threats of dire consequences; thereafter on 03.4.2012, applicant alongwith two other accused persons came at the house of complainant and demanded his outstanding amount from the deceased, as such deceased asked them that he is ready to provide them money, thereby they proceeded towards town; thereafter Faiz Mohammad did not return home; the complainant was searching to him. On 05.4.2012, he received information that one dead body is lying in well, thus they reached there and found the same, having injuries. Thereafter, they brought dead body at police station and after postmortem and burial ceremony complainant lodged F.I.R.

3. Learned counsel for the applicant, *inter-alia*, contends that according to F.I.R place of incident and time of incident is not mentioned; instant case relates to last seen evidence; inspite of knowledge the complainant did not approach to the concerned police regarding the alleged incident; co-accused whose name was disclosed by witnesses in their statements recorded under Section 161 Cr.P.C. and complainant in further statement has been granted bail by the trial Court; therefore, case of applicant requires further probe, so also he is entitled for post arrest bail on rule of consistency. In support of his contentions, learned counsel relied upon case of *Arif v. The State (2001 P.Cr.L.J 40), Muhammad*



*Dawood and another v. The State and another* (2008 SCMR 173), *Asmatullah alias Tull and 3 others v. The State* (P.L.J 2009 Criminal (Peshawar) 117, and case of *Mohammad Ilyas v. The State* reported in P.L.J 2009 Criminal (Lahore) 951.

4. Conversely, learned State Counsel assisted by complainant's counsel while refuting the submissions raised by applicant's counsel contended that name of applicant transpires in F.I.R with motive; case of co-accused is on different footings, therefore the applicant is not entitled for concession of bail.

5. Heard learned counsel and perused the record.

6. After careful consideration to submissions of respective counsel and meticulous examination of available record, it reveals that the incident relates to the last seen evidence. Candidly, place and time of incident is not mentioned in F.I.R. Further, it is surfaced that on 03.4.2012 complainant alongwith witnesses seen the deceased in company of applicant and two other accused persons, but F.I.R was lodged on 06.4.2012, with the delay of three days. It is apparent that during this period, no such intimation or entry was recorded at concerned police station, whereas it is contended that on 05.4.2012, complainant received information that one dead body is available in the well, whereby they went there and found that it was dead body of Faiz Mohammad, having injuries. In spite of that they did not report the matter to concerned police, and after completing all proceedings, even burial ceremony, they recorded F.I.R on next date. Besides, on further statement of complainant and statements of prosecution witnesses recorded under Section 161 Cr.P.C., name of co-accused was disclosed as Shahid son of Allah Ditto, who has been granted bail by trial Court vide order dated 07.08.2012 by holding that "*there is no direct evidence against applicant/accused and case of applicant/accused is based upon last seen evidence of complainant and witnesses*". Thus prima-facie, the facts and circumstances of the instant case require further probe. Simultaneously, co-accused Shahid has been granted post arrest bail by the trial Court,



therefore, the applicant also deserves same treatment Reference, if any, can be made to the case of Dawood and another (supra).

7. In view of above, applicant has succeeded to bring his case within the purview of Subsection (2) of Section 497 Cr.P.C., hence admitted to post arrest bail in the sum of Rs.500,000/- (Five hundred thousands) and P.R bond in the like amount to the satisfaction of trial Court.

8. While parting, the learned trial Court is directed to expedite the case and dispose it, preferably within the period of six months.

9. The observations made hereinabove are tentative in nature and will not prejudice case of either party.

Judge

Ansari/\*