

## ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Appln. No.S-95 of 2022.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

**20.06.2022**

Mr. Saeed Ahmed Bijarani, advocate for the applicants.

Mr. Aftab Ahmed Channa, advocate for the PW-1, mother of deceased.

Mr. Aitbar Ali Bullo, D.P.G.

**ORDER.**

This is post arrest bail application filed by the applicants 1.Shah Ali, 2.Mohammad @ Mohammad Nawaz, 3.Umed Ali, 4.Adam and 5.Shah Nawaz in respect of F.I.R No.30/2021 registered at Police Station Ghouspur, District Kashmore at Kandhkot, for offence punishable under sections 302, 311, 148, 149, PPC, after rejection of bail from the Court of learned Sessions Judge, Kashmore at Kandhkot vide order dated.22.02.2022.

2. Facts of the prosecution case as per F.I.R lodged by complainant ASI Shoukat Ali, on behalf of the State are that on 11.07.2021, he received information that one Khadim Bhayo was preparing to commit murder of Mst. Shahida. On receipt of such information, ASI along with his sub-ordinate staff members left the PS and when reached at pointed place, they heard the voice of fires in the house. They entered in the house and saw that accused 1.Khadim, 2. Zahoor and 3. Ali Nawaz duly armed with Klashnikovs along with two unknown culprits, who fled away through street in Eastern side of house. It is further alleged that police party followed them but they succeeded to run away; however, police came back in the house and

noted injuries of the deceased Mst. Shahida. With the help of womenfolk available in the house found out that deceased had received three fires. Womenfolk disclosed that accused persons had committed murder of Mst. Shahida by declaring her as Kari. Police party brought dead body of deceased and after conducting postmortem through concerned Hospital, lodged F.I.R on behalf of the State as mentioned above was lodged.

3. Learned counsel for the applicants states that the present applicants were not nominated in the F.I.R but their names were inserted in the 161, Cr.P.C statement of the witnesses, as such they were initially placed in column No.2 of the final report, wherein the learned concerned Magistrate disagreeing with the same required proceeding of the case against all the accused including the present applicants. He further contends that the present applicants have been named after one month's delay and as such it is apparent that they have been roped in on account of the relationship with the main accused nominated in the matter. He relies upon the cases of *Abdul Hameed v. The State* (2005 MLD 508) and *Kashif alias Wajid alias Waju v. The State and another* (2022 SCMR 828).

4. Learned D.P.G however supports the impugned order, whereas learned counsel for PW-1, the mother of the deceased states that the present applicants were fully implicated in the 161 Cr.P.C statement made by the eyewitnesses and as their version was not being considered by the Investigating Officer; they were forced to file an application under section 22-A & B, Cr.P.C before the concerned Sessions Judge. Where-after finally they acquired the proper implication of the present applicants in the matter which was confirmed by the order of the concerned Magistrate. He relies upon the cases of *Ali Bux and another v. The State* (2020 P.Cr.L.J Note 162), *Abdul Khaliq v. The*

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*State (2017 YLR 215), Rab Nawaz and 2 others v. The State (2015 P.Cr.L.J 1531), Ranjho and 5 others v. The State (2012 YLR 26), Khadim Hussain and another v. The State (PLD 2012 Balochistan 179) & Shahida Parveen v. Manzoor Ahmed and another (2000 YLR 150).*

5. Having heard learned counsels and gone through the record.

6. It may first be observed that at bail stage the only a tentative assessment is to be made by the Court. In the present matter from the record it bears that the first recorded statement of the eyewitnesses implication of the present applicants was made. The delay though may be present as relied upon by the learned counsel for the applicants; however, it is observed that the I.O at the initial stage has failed to record the statement of the witnesses and looking at the nature of allegation and finally the approach made to the learned Sessions Court, it cannot be directly concluded that the delay as present was self indulging or was be used to implicate the present applicants. The authorities relied upon by the learned counsel for the applicants as such are found distinguishable. As such at this point of time it cannot be considered that the present applicants be granted the concession of bail as the first recorded statement of the eyewitnesses apparently impleads them. The possibility and existence of the other version cannot directly be ruled out also but the facts come up only after recording of evidence in the matter. Let the learned Sessions Judge make the sincere attempt to conclude the trial or at least record deposition of the eyewitnesses within a period of three months, whereafter the present applicants may proceed for the concession of bail for the grounds as may be available to them. The bail application stands dismissed, however, with the above directions.

  
Judge