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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Bail Application No. S- 252 of 2019

Applicant: Younis Lashari
through Mr. Safdar Ali Ghouri,
Advocate.

Complainant: Saeed Murad through Mr. Saeed Ahmed
B. Bijarani, Advocate.

State: Through Mr. Muhammad Noonari, D.P.G.

Date of hearing: 17-06-2019

Date of order: 28-06-2019

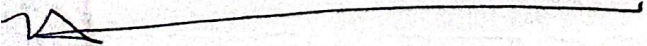
ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- Applicant/accused Younis son of Abdul Ghani Lashari, has filed present bail application in Crime No. 07/2019 registered at P.S. B/Section Kandhkot under Sections 316, 450, 147, 148 PPC.

Earlier his bail plea was refused by learned Sessions Judge, Kashmore at Kandhkot vide order dated 29.03.2019, available in the record.

2. The report/Challan (under section 173 Cr.P.C) in the case has been submitted before the learned Trial Court.

3. Mr. Safdar Ali Ghouri, learned counsel for the applicant has stated that there was an old dispute between the complainant and the accused as mentioned in the F.I.R itself. There are glaring contradictions in the version of the complainant in the F.I.R, inter alia, as it is stated that one of the accomplices of the present accused was armed with a T.T pistol, but, the deceased (Waheed Murad) did not receive any bullet injury. Postmortem report available in the record does not support the version in the F.I.R and



the conclusion as mentioned in the postmortem report is that death was caused due to cardiac arrest. The learned Advocate has relied upon the following case law in support of his arguments that the postmortem report can be considered at the bail stage; (i) *Awal Khan & 7 others v. The State* though A.G KPK **2017 SCMR 538** and (ii) *Adam Khan v. The State* **2018 MLD 1007**.

The learned counsel has also relied upon a reported decision of Honourable apex court of PLD 2005 SC 99, that, "*cause of death can only be gathered safely through a postmortem examination....*"

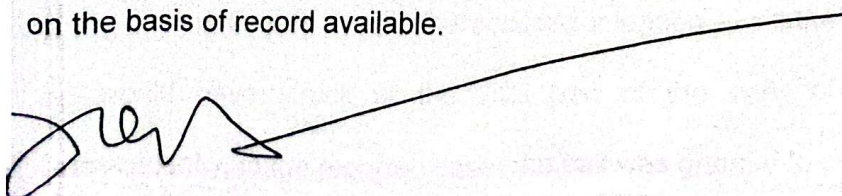
He requests that the applicant/accused may be released on bail.

4. On the other hand, the complainant side, represented by Mr. Saeed Ahmed B. Bijarani, Advocate, has vehemently opposed the grant of bail on the grounds that (i) the present applicant/accused has been assigned specific role which led to the death of above named deceased, (ii) the unfortunate incident took place in day light and since parties know each other, therefore, there is no question if mistaken identity. The learned Advocate has relied upon a decision handed down by the learned Islamabad High Court in the case of *Zia Mehmood v. The State*, reported in **2012 P.Cr.L.J 94**, wherein the concession of bail was refused.

5. Learned D.P.G also supported the version of F.I.R and opposed the grant of bail to the accused.

6. Arguments heard and record perused.

7. At this bail stage only a tentative assessment can be made, primarily on the basis of record available.

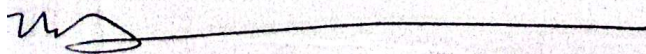


8. Challan has been submitted before the learned Trial Court and thus accused is not required at present for further investigation. The challan has been submitted under section 316, 450, 148, 149, PPC and Section 302, PPC as originally mentioned in the F.I.R has been omitted.

The Postmortem Report available in the record, at this stage can be considered for limited purpose and in this regard the decision of Honourable Supreme Court is relevant in the case of *Awal Khan & 7 others v. The State* though A.G KPK 2017 SCMR 538. The Postmortem Report in the present case is perused, wherein in column No.6 the concerned Medical Officer has opined that cause of death is natural and due to cardiac arrest, while observing in the first page of the Postmortem Report that "no mark of violence seen all over the body".

In the above mentioned decision of *Awal Khan*, the Honourable Apex Court granted bail to the petitioner (of the reported case) on the ground that there was a conflict in the ocular account and medical evidence.

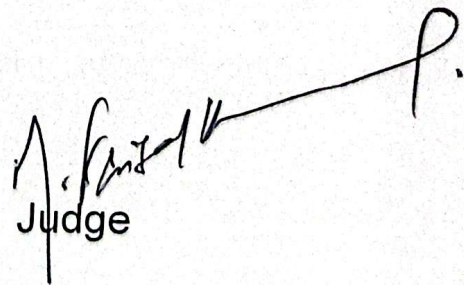
The other significant factor though *prima facie*, in the present case is, that as per prosecution version, other accomplices of the accused beaten the deceased to death, through kicks and fist blows, but not a single shot was fired although one of the accomplices of the accused was armed with a T.T pistol. The only allegation against the present applicant/accused is that he grabbed the deceased father of the complainant. There is no allegation even in the F.I.R that the present applicant /accused caused any injury on the person of deceased. A reported decision in the case of *Muhammad Shahzad v. The State* 2009 MLD 348 further addresses this aspect of the case, wherein, it is held that, had the accused intended to kill the deceased, then he would have struck at the vital part of the body of the deceased. Consequently, in the reported case, the bail was granted to the accused.



To the above facts, rule laid down in the case law cited by learned Advocate for the applicant/accused is applicable, whereas the decision relied upon by the learned counsel for the complainant is distinguishable.

9. In view of the above discussion, the conclusion is that further inquiry is necessary in the matter to prove the guilt of present applicant/accused with regard to the offence committed, which is only possible after the conclusion of the trial. Hence the applicant/accused above named is entitled for the grant of bail, which is accordingly granted in the sum of Rs.100,000 (Rupees One Hundred thousand only) with P.R bond in the like amount to the satisfaction of the trial Court.

10. If the applicant / accused misuses the concession of bail then the learned Trial Court may take strict action against him in accordance with law with a further clarification that the learned Trial Court will not be influenced by any of the observations contained herein above and decide the case on merits and after appreciation of the evidence.


Judge