

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

Crl. Bail Appln. No. S- 424 of 2017.

Date of hearing	Order with signature of Judge
21.11.2017.	

1. For orders on office objections.
2. For hearing of bail application.

Mr. Ahmed Hussain Khoso, Advocate for applicant.

Mr. Raja Riaz Akhtar, Advocate for complainant.

Mr. Sardar Ali Rizvi, D.P.G.

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Muhammad Saleem Jessar, J- Through this bail application, applicant Darya Khan Khoso seeks his admission to post-arrest bail in Crime No.44/2017 of P.S Moula-dad, District Jacobabad, registered for offences punishable under Sections 302, 201, 148, 149 P.P.C.

The bail application moved by the applicant before the learned Sessions Judge, Jacobabad was declined by means of Order dated 19.08.2017 passed in Crl. Bail Appln. No. 749 of 2017.

The crux of prosecution case is that, on 20.06.2017 complainant Muhammad Bux appeared at P.S Moula-dad and lodged report to the effect that some days back Niaz Ahmed Khoso and others had purchased CD-70 motorcycle from his brother namely, Muhammad Acher. That, on 17.6.2017 in evening time, said Niaz Ahmed Khoso and others had called his brother at Jacobabad for giving him money, as such complainant alongwith his brothers Muhammad Acher, Khadim Hussain and their relative Muhammad Yousif came at Caltex Petrol Pump, Jacobabad, where they saw Niaz Ahmed, Riaz Ahmed and three unknown persons, out of them Niaz Ahmed and Riaz Ahmed asked complainant's brother Muhammad Acher to accompany them to receive money. As such, Muhammad Acher went with them and complainant party waited for him, but he did not return, however the complainant party went back to their house and on 20.06.2017 their Nekmards informed that on 17.6.2017 accused Niaz Ahmed , Riaz Ahmed and three unknown persons had

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committed murder of his brother by causing him pistol shots and thrown his dead body in the water. Ultimately, the complainant went to police station and lodged report.

Learned counsel for applicant mainly contended that, F.I.R is delayed for three days; that name of applicant does not appear in the F.I.R, and even no active role of causing fire etc. is assigned to any of unknown accused; that the alleged incident is un-seen and un-witnessed one, and there is only last seen evidence against the accused persons; that there is no recovery of any incriminating article from possession of the applicant, but for the first time his name was introduced in this case in further statement of the complainant and statements prosecution of witnesses recorded under Section 161 Cr.P.C, who too are belated by three days and are full of improvements, as F.I.R mentions no any role of unknown accused but witnesses have leveled allegation of abetment against applicant in their statements. In support of his contentions, learned counsel placed his reliance on the case laws reported as *Muhammad Mithal alias Imam Bux v. The State* (2012 YLR 515), *Amir Bux v. The State* (2012 YLR 668) and *Abdul Rasheed and another v. The State* (2012 YLR 486).

Learned D.P.G and learned Advocate for complainant opposed grant of bail, but could not controvert the submissions advanced by learned counsel for the applicant.

I have heard the learned counsel for the applicant, learned Advocate for complainant and learned D.P.G. as well as perused the material with their able assistance.

Record reflects that, F.I.R is delayed for about three days and name of applicant is not appearing in same; however for first time his name was introduced in the case on the basis of further statements of complainant and PWs, which too are recorded belatedly. Even otherwise, no active role of making fire etc. has been assigned to the applicant in further statements of complainant PWs, as such question of sharing

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common intention and vicarious liability of the applicant would be determined at the time of trial. Prima-facie, the incident appears to be unseen and un-witnessed. The evidence against the accused persons including present applicant is that of only last seen and nobody including complainant and his witnesses have seen any of culprits while committing murder of deceased. Furthermore, there is no recovery of any incriminating article from possession of the applicant connecting him with commission of alleged offence.

It further appears from bare reading of F.I.R that same is absolutely silent as far as name of applicant is concerned. Even, it shows that his face was open yet he could not be identified nor marks of identification has been mentioned in F.I.R. Subsequently in terms of further statement recorded after considerable delay of three days, it is not conceivable that the name of the applicant was disclosed, as it is neither an F.I.R nor a document which is equivalent or could be read as part of the same. Value of such further statement however, will be determined subsequently keeping in view the settled principle of law in this behalf. At this stage, such further statement cannot be considered keeping the applicant behind bars when the F.I.R itself is absolutely silent. It is well settled principle of law that further statement is a false/ fake improvement and same would neither be equated with first information report nor be read as part of it. Reference can well be made from the case of FALAK SHER alias SHERU v. The State (1995 SCMR 1350). Further reliance can be placed upon the case of SHOAIB alias SABA v. The State and another (2015 P.Cr.L.J 727), MUHAMMAD AKRAM v. The State and another (2016 P.Cr.L.J 1239) and JAFFAR MEHMOOD and others v. The State and others (2016 YLR 846). I am also fortified with the dicta laid down by Hon'ble Supreme Court of Pakistan in case of NOOR MUHAMMAD v. The State (2008 SCMR 1556).

All the above factors and material available on record makes the case of applicant one of further enquiry in terms of Section 497 (2) Cr.P.C. Consequently, the applicant is admitted to post arrest bail, upon his

furnishing solvent surety in the sum of Rs.200,000/- (Two hundred thousand rupees) and P.R bond in the like amount to the satisfaction of learned trial Court.

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JUDGE  
21/11/2017

Ansari/\*

Disposed off Case

1- For Order on MARAO. 4218/17 (41A)  
2- For Order on MARAO. 4219/17 (56A)