

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 455 of 2017.

Date of hearing
30.10.2017.

Order with signature of Judge

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

Messrs Ali Nawaz Ghanghro and Muhammad Hashim Soomro,
Advocates for applicant.
Mrs. Rubina Dhamrah, ADPP.
Complainant present in person.

Through this application, applicant Mashooque Ali Magsi seeks his release on bail in Crime No.50/2015, P.S B-Section Shahdadkot, under Sections 302, 34 P.P.C. The case has already been challaned by the police on 28.11.2015 and same is now pending for trial before the Court of learned Additional Sessions Judge, Shahdadkot, vide Sessions case No.43 of 2016 Re; State v. Shah Nawaz alias Shah Dino and others. The bail plea raised by the applicant before the trial Court was turned down by order dated 16.8.2017, hence this bail application.

Learned counsel for the applicant argued that allegation against the applicant is that he allegedly was having lathi in his hand at the time of alleged offence and was holding deceased Mst. Shabiran Khatoon from her hairs while co-accused Shah Nawaz had caused her death by pressing her neck, therefore, no specific role of causing any injury or any overt act is assigned to him except mere holding deceased from her hairs and though he was allegedly armed with lathi but did not use the same in the commission of alleged offence. He further submitted that the applicant being elder of their community has been arraigned as accused in the case, but has acted no active role in the commission of alleged offence and only he has been dragged to exert illegal pressure upon him so that he may not try to reconcile parties over the issue, which in-fact was result of matrimonial dispute. According to him, the case of prosecution requires further probe.

Conversely, learned ADPP present alongwith complainant vehemently opposed the bail application on the ground that the applicant had acted actively by holding hairs of deceased and thus has facilitated the co-accused in the commission of alleged offence. The complainant present in person, states that he has no means to engage a counsel; however he has full trust over prosecutor and thus also raised objection regarding grant of bail.

I have heard the learned counsel for the applicant, learned ADPP and the complainant.

Admittedly, the F.I.R is delayed for more than 26 hours and the role assigned to the applicant is that of holding hairs of deceased, though he has been shown duly armed with lathi but he has not used the same and holding from hairs of deceased is yet to be proved by the prosecution at trial. Further, the applicant was all along on interim pre arrest bail granted to him by the trial Court by means of order dated 11.11.2016 and later it was recalled on 03.12.2016 and he was taken into custody and since then he is behind bars. The fresh post arrest bail application No.26/2017 was filed but it met to same fate vide order dated 16.8.2017. Moreover, role assigned to applicant does not appeal to prudent mind, particularly when he was having lathi and the deceased allegedly was done away with by pressing her neck. Such behavior and conduct of the prosecution while discharging its legal duties had casted serious doubt upon its veracity, which prima facie makes the case of applicant to be one of further enquiry and entitles him for bail. Consequently, instant application is allowed. The applicant is admitted to 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 trial Court.

JUDGE