

*RDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. B.A. No.S-366 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

29.06.2017.

Mr. Shabeer Hussain Memon, Advocate for the applicant.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

Through instant bail application, the present applicant seeks his release on post-arrest bail in Crime No.153/2015, registered at Police Station Jamshoro for offences under sections 302, 201, 109 PPC.

2. The brief facts as mentioned in the FIR are that on 11.07.2015 at about 1800 hours, ASI Muhammad Ali Soomro PS Jamshoro lodged FIR stating therein that, they were available at PS, where they received spy information that, on 10.07.2015 at about 2300 hours accused Ali Sher and Ali Nawaz both along with unknown accomplice had committed murder of his daughter-in-law Arifa aged about 20/21 years, inside house by fire shots. On such information, ASI along with his subordinate staff went to the house of Ali Sher Babar, where no concerned person met them. The complainant party enquired from neighborhood but due to fear nobody was ready to disclose anything. However, they came to know that accused have buried dead body of Arifa in Jeay Shah graveyard and concealed the evidence/proof. Since no person came forwarded as complainant, therefore, ASI registered FIR of this case on behalf of state making complainant against the above named accused persons that they murdered Mst. Arifa on "Honour Killing" by holding her "Kari" through fire shots and buried her dead body and concealed the evidence.

3. Heard counsel for the parties and perused record

4. Learned Counsel for applicant/accused argued that FIR is delayed for about one day without plausible explanation; the incident had taken place in the house of in-laws of deceased Mst. Arifa, hence present applicant/accused is totally unaware about the incident; that present applicant/accused has only

been involved on the basis of statement of complainant-accused and such piece of evidence has got no evidentiary value; that the statements of Mst. Shabeeran and Mst. Bushran recorded u/s 164 Cr.P.C have no evidentiary value because they were not present at the place of incident at the time of offence.

5. On the other hand learned APG vehemently opposed the bail application; that role of present applicant/accused Ghulam Abbas is different to that of co-accused Abdul Latif, Parial and Nadeem who have been granted bail by this Court. The sister of present applicant/accused Mst. Shabeeran as well co-accused Ali Nawaz and Ali Shel the brothers of present accused, have implicated him, therefore, he is not entitled for the concession of bail. It was also added that the manner in which the offence had taken place also bring it within meaning of *terrorism* hence same must be tried by the Court, established to try such offences.

6. I have considered the submission of both parties and perused the record.

7. The instant bail application *however* has been pressed on the rule of consistency as well on merits. There could be no denial to the legal position that to press the *rule* of consistency the accused is required to *prima facie* establish that his case and that of released accused *squarely* stand on same footing. In absence thereof, mere release of co-accused on *bail* would be of no help to press *rule* of consistency. Keeping this principle in view, I have perused the bail granting order, passed by this Court. This Court while granting bail to accused Abdul Latif, Paryal and Nadeem observed in Para No.7 of that bail order has observed that “***no material has been collected against them during investigation by the police***” but the record shows that case of present accused is different to that of co-accused who have been granted bail by Honourable High Court of Sindh, Circuit Court, Hyderabad as Mst. Shabeeran, the real sister of present accused Ghulam Abbas in her 164 Cr. PC statement implicated him so also co-accused Ali Sher and Ali Nawaz, the real brothers of accused Ghulam Abbas also implicated him in extra

judicial confession. It was observed by the Apex Court in case of **Ghulam Ahmed Chisti Vs. the State** (2013 SCMR 385) as follows:-

*“Statement of co-accused implicating the accused for the offence---Evidential value---Scope such a statement could be used as a circumstantial piece of evidence even at bail state to from a prima facie view about an involvement of a person (Article 43 of Qanoon0e-Shahadat order)”.*

8. The applicant is involved in a heinous offence and allegedly caused murder of Mst. Arifa, the real daughter of present applicant/accused Ghulam Abbas under allegation of “Kari” and such type of heinous offence has become curse for the society. I would also add that in this case, 29 injuries received by one girl and offence was attempted to be concealed which *however* was reported by one paternal aunt with the help of one woman working in NGO. The *plea* of ignorance of a father (who is police officer) of *unnatural* death of his daughter is also illogical one *which* he (father) *however* can establish before trial Court. All the facts and circumstances *prima facie* make me of the clear view that applicant / accused has failed in making out a case for his release on *rule of consistency*.

9. While parting, I would add that the learned State counsel has insisting question of *jurisdiction* of trial Court while claiming that case is one to be tried by the ATA Court which *question* cannot be decided by this Court while entertaining bail plea, particularly when not appreciated by trial court *first*. Therefore, I find it in all *fairness* to leave this question to be determined by the learned Trial Court who shall examine the issue of jurisdiction in view of judgment of Apex Court reported in **2012 SCMR 517** (Nazeer Ahmed v. Nooruddin), wherein it is opined that manner of action is material to decide the jurisdiction. This point shall be decided within fifteen days from today with notice to all parties and compliance report shall be submitted to this Court. The trial Court *however* shall record the order strictly in accordance with law without being influenced from any observation, if any, made in this order because the observations made hereinabove are tentative in nature and shall not effect merits of the case.

JUDGE