

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.Bail.Appl.No.S- 1100 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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12.06.2017.

Mr. Mumtaz Alam Leghari, Advocate for applicants.
Mr. Muhammad Aslam Khan, Advocate for complainant.
Mr. Shahid Shaikh, A.P.G. for the State.

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Through instant bail applications, applicants seek post arrest bail in Crime No.124 of 2014 registered at Police Station Shahdadpur u/s 302, 147, 148, 149 PPC.

2. At the outset, learned counsel the for applicants contends that the legal heirs except father of the deceased have sworn their affidavits, contending therein that due to compromise between them, they have no objection if the bail is granted to the applicants. Besides, eye witnesses, complainant and one witness have filed their affidavits, contending therein that they have not implicated the applicants whereas their bail was declined by the trial court on the issue that the affidavits cannot be considered at the bail stage while relying upon PLD 1997 Supreme Court 476. He also relied upon 2009 SCMR 448.

3. Learned counsel for the complainant present extends no objection.

4. Leaned A.P.G. on the other hand contends that the affidavits at bail stage cannot be considered. He relied upon 2004 P.Cr.L.J 550.

5. Perusal of the affidavits shows that the applicants have been arraigned in murder case. Admittedly same is compoundable. Two types of affidavits have been filed. One set of affidavits filed by the legal heirs whereas second set of affidavits has been filed by the witnesses of the incident. In former, legal heirs contend that they have forgiven the accused in the name of Almighty Allah and they have no objection if the bail is granted to the accused. In later, witnesses have resiled from

their earlier statements. Worth to add here that *normally* there are two categories of offences; one falls within meaning of '**compoundable**' and other '**non-compoundable**'. Needless to *add* that in *compoundable* offences the persons entitled to compound can *earn* the acquittal of the accused even if the witnesses of such *like* strongly stuck with their statements hence *affidavits* of no-objection for bail may well be considered for admitting one to bail, if it appears to the Court to be *voluntary* one. In such like cases, if the *witnesses* of cases also resile from their statements even through affidavit then in such eventuality it would become a case for *grant* of bail because such *summersault* of witnesses *prima facie* would be appearing to an *stamp* to compromise, arrived between the *real* parties, therefore, there would be no *legal* justification to keep such accused behind the *bars* in a case where both *legally* entitled persons to favour an *acquittal* have tilted in favour of release of accused on bail. It is necessary to differentiate here that even in a compoundable offence if *only* witnesses of case (not legal heirs) make *affidavits* then the court must be conscious other available material so as to eliminate possibility of such persons, being maneuvered witnesses, at costs of victims. In case of non-compoundable offence, affidavits filed even *by* a victim would not be of any legal value or substance. *Normally*, in such like cases (non-compoundable offences) the summersaults of witnesses be avoided because *law* otherwise recognize two types of **statements**, one recorded during course of investigation and other during course of trial. At bail stage, normally the existence or non-existence of reasonable grounds is to be examined on basis of *available* material which is not dependant upon **objection** or **no objection** of witness.

In the instant case, not only the witnesses of the case but legal heirs *too* have filed their affidavits in favour of the release of the applicant / accused on *bail*. One of the legal heir, who is father, though is opposing the bail application on the ground that the applicants are the real culprits of the incident and they may not be released on bail whereas legal heirs of the deceased viz. mother, widow and son

present in court contend that since after the second marriage father of the deceased is residing separately and he has no concern, therefore, I do not find it proper and *legally* justified to keep accused behind the *bars* when not only *legal heirs* of deceased except *father* and witnesses have favoured the *release* of accused merely for reason that only one of legal heirs is not standing in same *boat*.
Worth to refer Section 307 PPC *here* which reads as:

“307. Cases in which *qisas* for *qatl-i-amd* shall not be enforced. (1) *Qisas* for *qatl-i-amd* shall not be enforced in the following cases, namely:

- a) *where....*
- b) *When any wali, voluntarily and without duress, to the satisfaction of the Court, waives the right of qisas under section 309 or compounds under section 301; and*
- c) *,,,*

which brings the act of *qatl-i-amd* within meaning of Section 302(c) PPC. Thus, the *affidavits* by any of the *wali*, as defined by section 305 PPC, acknowledging the compromise; waiving rights of *qisas* and no objection for release of bail will also tilt the case of the accused for grant of bail. The case law relied by learned State counsel is not applicable to *peculiar* facts of instant case.

Under these circumstances, this is a fit case for the bail. Accordingly, the applicants are admitted to post arrest bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

JUDGE

