

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 957 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of main case.

20.10.2020

Mian Taj Muhammad Keerio, Associate of Ms. Saniya Mallah, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G, Sindh.

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ZULFIQAR AHMAD KHAN, J.-Through instant application, Applicant seeks her admission on post-arrest bail in Crime No.62 of 2020, registered at Police Station Matiari, under sections 302, 34 PPC. Earlier bail plea preferred by the applicant was declined by means of order dated 24.09.2020, passed by learned Additional Sessions Judge-I / Model Criminal Trial Court, Matiari in Cr. B. A. No.634 of 2020.

2. Brief facts of the case, as per F.I.R, lodged by complainant Jeewan on 17.08.2020 at P.S Matiari are that complainant's brother Mohan married with Shrimati Shano, who has illicit terms with Amarshi alias Dholo. It is alleged that on 06.08.2020 dead body of Mohan was found hanging with Girder. Shrimati Dharmi disclosed the complainant that on the fateful day Shrimati Gulalai (present applicant) came and gave Mawa (Sweet) to Shrimati Shano, and after taking meals both Mohan and Shrimati Shano went to sleep, when complainant party heard some voices hence they went inside the room where Shrimati Shano and Amarshi were present while dead body of Mohan was hanging with Girder.

3. Learned counsel appearing on behalf of applicant has argued that there is inordinate delay of 12 days in lodging of FIR, which has also not been plausibly explained by the complainant, hence according to him false implication of the applicant in this case with due deliberation and consultation could not be ruled out; that the applicant was not seen at the time of alleged incident; that the applicant has only been implicated on the statement of P.W

Shrimati Dharmi; that the only allegation against the applicant is that she gave sweet (Mawa) to the wife of deceased which fact shall be determined at the time of trial; that the incident as alleged by the complainant is unseen and there is no ocular evidence against the applicant to connect her with the alleged offence, therefore, the case of the applicant requires further probe; hence she is entitled for bail.

4. Learned A.P.G opposes the instant bail application on the ground that name of the applicant is appearing in the F.I.R with specific role; that applicant has committed heinous offence, hence she does not deserve any concession at this stage.

5. I have heard the learned parties' counsel and perused the record so made available before me.

6. It appears from the record that the alleged incident took place on 06.08.2020 whereas the FIR was registered on 17.08.2020 after the delay of 12 days, for which no satisfactorily explanation has been furnished by the complainant; that no specific role has been assigned to the applicant; that only allegation against the applicant is that she provided some sweet (Mawa) to main accused Shrimati Shano, who allegedly had illicit terms with co-accused Amarshi and as per F.I.R, both Shrimati Shano and Amarshi were found present at the relevant near dead body of the deceased. Per learned counsel for applicant, Sweet (Mawa) was later on discovered from the possession of co-accused Shrimati Shano. As a matter of fact the present applicant is not even a member of the family and she lives separately. It is alleged that the complainant has evil eye on the applicant and has frivolously named her in the F.I.R and specified the role against her.

7. Significantly, the chemical report with regard to the poisonousness or otherwise of the sweet (Mawa) allegedly provided by the applicant to co-accused Shrimati Shano has not been received as yet. No tenable evidence is available with the prosecution to connect the applicant with the commission of alleged offence at this juncture. Admittedly, one person died and his hanging dead body was seen and two persons namely co-accused Shrimati Shano and

Amarshi were seen by the P.Ws, and on the statement of P.W Shrimati Dharmi present applicant has been implicated in this case. Such a nomination by a co-accused has no strength in the eye of law viz Article 38 & 39 of the Qanun-e-Shahadat. At this stage, I fear that no cogent and direct evidence is available with the prosecution to connect the applicant with the commission of alleged offence. In the given circumstances, case of the applicant falls within the ambit of further inquiry as envisaged under section 497(2) Cr.P.C.

8. For what has been discussed above, I have come to the conclusion that the applicant has made out her case for grant of bail, therefore, I admit her on bail subject to furnishing her solvent surety in the sum of Rs.1,00,000/- (one hundred thousand only) with PR bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention that the observations made herein above are tentative in nature and would not prejudice the case of either party before the trial Court while deciding the case on merits.

JUDGE

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