

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Crl. Bail Application No. 1251 of 2018**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing of bail application.

**20.11.2018**

Mr. Muhammad Naseem Abbasi, Advocate for applicant.

Mr. Zahoor Shah, DPG for State.

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The applicant Mohammad Khan has sought post arrest bail in crime number 289 of 2012 registered under sections 302, 392, 397 and 34 P.P.C. at the New Karachi Industrial Area. Earlier, his post arrest bail application was turned down by the learned Court of Sessions, Karachi Central on 9-8-2018.

2. Brief facts of the case are that the aforementioned F.I.R. was registered on 14.11.2012 on the complaint of one Abdul Waheed. The complainant reported that earlier that date, his son Kashif had left the house for some work but had not returned. Later the same day he was informed that his son had been murdered and that his dead body was at the Edhi Centre. The F.I.R. was registered against unknown persons. On 23.11.2012 one Faizan alias Munna was arrested in another crime (F.I.R. 497 of 2012). Faizan alias Munna revealed to the police that he along with Mohammad Khan alias Kulhara son of Allah Dino (ostensibly the applicant in these proceedings) and Wajid alias Majid had killed Kashif while the three of them were looting people. The applicant was arrested on 11-1-2018 in another case (F.I.R. No. 10 of 2018) and was then rearrested in the present case.

3. I have heard the learned counsel for the applicant as well as the learned DPG. The complainant did not effect an appearance despite notice. My observations are as follows.

- (i) The learned D.P.G admits that the only evidence against the applicant is that of co-accused Faizan @ Munna who told the police when he was arrested in another crime that he along with two of his accomplices, which included the applicant, had killed Kashif. Prima facie the evidentiary value of such a statement/confession in light of the provisions of Article 39 of the Qanun-e-Shahadat Order, 1984 is questionable especially when it did not lead to the discovery of any relevant fact.
- (ii) Apart from the above, there appears to be a witness named Mohammad Ashiq who says that he was an eye witness and that he saw all three accused.

According to the police report itself when this witness was asked to assist the police in preparing sketches of the accused, he did not co-operate. No description of the murderers was given by Mohammad Ashiq. The prosecution story is that when the applicant was arrested Mohammad Ashiq came to the police station and identified him. Admittedly, no identification parade was held even though the arrest of the applicant was made 6 years later. Mohammad Ashiq must be put to the test of cross examination before the statement he made to the police is given weight.

- (iii) Faizan alias Munna was released by the police on his own bond under section 63 Cr.P.C. on 15-8-2013. He was assigned exactly the same role as the applicant. On the ground of consistency too, the applicant is entitled to bail.
- (iv) The applicant was said to have been arrested on 11-1-2018 however the learned counsel has put on record correspondence and courier receipts that prima facie show that the mother of the applicant had written to various authorities on 9-1-2018 stating that the police had picked up his son and was demanding Rs. 500,000 to release him. The veracity and genuineness of this communication will have to be established at trial however prima facie it appears that the applicant was picked up prior to his arrest being shown by the police.
- (v) Another aspect of the case is that the person who was charged with the crime (details of which are contained in the police report under section 173 Cr.P.C) was a man named Mohammad Khan alias Kulhara son of Allah Dino whereas the National Identity Card of the present applicant shows his father's name to be Hazoor Baksh and not Allah Dino. The police have attempted to justify this by writing in the section 173 Cr.P.C report that the applicant himself told the learned magistrate at the time of the remand that his father's name was different. Learned counsel for the applicant strongly opposes that such a statement was ever made by the applicant. Prima facie it appears that confusion exists in the identity of the applicant which will have to be clarified at the time evidence is led.

4. Above are the reasons for my short order dated 30.10.2018 in terms of which the applicant was admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs.50,000/- and P.R. bond in the like amount to the satisfaction of the learned trial court.

JUDGE