

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No. 1321 of 2022
a/wCrl. Bail Application No. 364/2022

Date	Order with signature of Judge
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For hearing of bail application

05th September 2022

Mr. Muneer Ahmed, advocate for the applicant/accused in Crl. Bail Application No. 1321/2022

Mr. Inayatullah Lashari, advocate for applicant/accused in Crl. Bail Application No. 364/202

Ms. Neelam Javed Arain, advocate for the complainant

Mr. Abrar Ali Khichi, Addl. P.G. Sindh

Briefly the facts of the prosecution case are that on 22.06.2021 at evening time, Din Muhammad left the house on the pretext that he was called by Ghulam s/o Imam Bux Katbar at Pipri Bin Qasim Karachi. Thereafter, he did not return. Complainant tried to contact his brother but failed, hence they obtained CDR of his brother from which it transpired that his brother was in contact with Mst. Bashiran wife of Ghulam. On 24.06.2021, accused came at Usta Muhammad from whom complainant enquired but they did not give satisfactory reply. Complainant made application to PS Usta Muhammad City Balochistan, on which SHO called Ghulam son of Imam Bux and Mst. Bashiran and inquired from them who disclosed that they called Din Muhammad at their house and on 23.06.2021 at 10:00 a.m. committed his murder and thrown the dead body of deceased in Nala under the Steel Mill bridge. Such information was conveyed to the SHO PS Bin Qasim, who recovered the dead body of the deceased from Nala and was sent to JPMC for postmortem, thereafter, complainant appeared at police station and filed the instant FIR.

2. Learned counsel for the applicants argued that nothing was recovered on the pointation of the applicants; that it is alleged that applicant Mst. Bashiran pointed out the place of incident, however, it was already visited by the police, hence it was not secrete place; that it is further alleged that Mst. Bashiran called deceased at her home is a question which could only be

determined at trial. As far as applicant Qadir alias Qaddan is concerned, no overt act is attributed against him and he was inducted as accused on the statement of co-accused which is admittedly inadmissible under the law, therefore, both the learned counsel for the applicants prayed for grant of post arrest to the applicants.

3. Learned Addl. P.G duly assisted by learned counsel for the complainant argued that Mst. Bashiran was facilitator in the commission of the offence, who admitted her guilt before the police by stating the whole story of the unfortunate incident and she pointed out the place where murder of deceased Din Muhammad was committed. Co-accused Qadir alias Qaddan was also available at the time of commission of murder of deceased Din Muhammad hence he was also vicariously liable for the offence, hence they prayed for dismissal of the bail applications.

4. Heard learned counsel for the respective parties.

5. Mainly case is against accused Ghulam @ Ghulam Jan, who being husband was annoyed with the relations of his wife with deceased and according to prosecution case, he caused hatchet injuries to the deceased, which resulted into his death, he is behind the bars.

6. With regard to the case of applicant Mst. Bashiran, who is wife of accused Ghulam @ Ghulam Jan, according to prosecution story, she allegedly called the deceased at her home where he was done to death, however, the allegation of facilitating the commission of crime is a question which can only be determined at trial and at bail stage only tentative assessment is to be undertaken. It is alleged that during interrogation the applicant pointed out the place of incident, admittedly it was not secret as the same has already been visited by the Investigating Officer in presence of complainant and the landlady. The other piece of evidence is extra-judicial confession of applicant alleged to have been made before the police, which is inadmissible under Article 39 of the Qanun-e-Shahadat Order, 1984. In any event in a recent pronouncement of the Honourable Supreme Court of Pakistan in the case of **Tahira Batool vs. The State and another (Criminal Petition No.910/2022)** decided on 19.08.2022 has held that where the accused is a minor under the age

of sixteen years, a woman, or a sick or infirm person, even in a non-bailable offence of prohibitory clause, bail is to be granted or refused in the same manner as in offences of non-prohibitory clause of Section 497(1) Cr.P.C. Besides, in the present case no exceptional circumstances have been pointed out justifying rejection of bail to the applicant Mst. Bashiran. With regard to the case of applicant Ghulam Qadir alias Qaddan, no overt act has been attributed to him. He was arrayed as accused on the statement of co-accused before police which is again inadmissible under Article 38 of the Qanun-e-Shahadat Order, 1984. With regard to vicarious liability, the same could hardly be a point to refuse bail to the applicant.

7. Keeping in view the given circumstances of this case and in the light of dictum laid down by Honourable Supreme Court, applicants have succeeded to make out case of post arrest bail, resultantly they are entitled for such concession.

8. For the foregoing reasons, the applicants are admitted to 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.

The observations made hereinabove are tentative in nature and learned trial Court shall not be influenced in any manner, while deciding the case on merits.

Sajid-

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