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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. B.A. No. S-314 of 2015

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing:

Mr. Ghulam Ali Samtio, advocate for applicant
Mr. Munir Ahmed Abbasi, D.D.P., for the State.

Date of hearing and order: **09.11.2015**

ORDER

ZAFAR AHMED RAJPUT, J: After rejection of his earlier bail application vide order dated 03.06.2015, passed by the learned Sessions Judge, Jacobabad in Cr. B. A. No.478/2015, applicant Abdul Majeed S/o. Noor Muhammad has approached this Court to seek post-arrest bail in Crime/ F.I.R No. 09 of 2015, lodged on 12-03-2015 at 2000 hours, by ASI Juma Khan Brohi, under section 302, 311, 324 and 34, P.P.C., at Police Station Dilmurad, Distt. Jacobabad.

2. Briefly stated, the case against the present applicant/ accused is that on 12-03-2015 at 1830 hours, he facilitated co-accused Fakir Muhammad alias Suleman S/o. Jando Wadoo, by caste Gabol by holding the wife of co-accused, namely, Mst. Shamshad to cause her hatchet blows, who succumbed to injuries. It is also alleged that the applicant fired from his gun upon Mst. Shamshad, which hit to co-accused Fakir Muhammad on right arm.

3. Mr. Ghulam Ali Samtio, the learned counsel for the applicant, has contended that the applicant is innocent and has been falsely implicated in this case by the police on the behest of co-accused Fakir Muhammad as there was ill-will between the co-accused and applicant over contracting marriage by the son of the applicant with the daughter of said co-accused without his consent. He has further contended that in an enquiry conducted on the order of DIGP, Larkana by the Crime Investigation Officer (CIO), City Shikarpor, it has come on record that

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SIP/ SHO Ayaz Ali Bhotto falsely implicated the applicant in this case with the connivance of co-accused Fakir Muhammad. Lastly he has stated that the vicarious liability and common intention cannot be established without recording the evidence hence, the question of applicant's guilt would require further enquiry; therefore, he is entitled for grant of bail.

4. Mr. Munir Ahmed Abbasi, the learned D.D.P. has opposed the instant application by submitting that the Court seized of jurisdiction for examining the question of bail should make only tentative assessment of the facts/ evidence without making detailed reference to the merits. He has further submitted that the applicant, while sharing common intention facilitated the co-accused, who committed intentional murder of his wife by declaring her as "KARI" and since the applicant is vicariously liable for alleged offence, he is not entitled for concession of bail. He has; however, admitted that in the enquiry conducted by CIO, City Shikarpor, the applicant has been exonerated from the charge.

5. I have given due consideration to the arguments and perused the material available on record.

6. Section 497 (2) of Cr. P.C., provides that if it appears to the Court at any stage of the case that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further enquiry into his guilt, such accused shall be released on bail. Now what will constitute as "sufficient grounds" for further enquiry would depend upon peculiar facts of each case and no hard and fast rule can be laid down for that purpose. In the case of Mudassar Altaf and another vs. The State (2010 SCMR 1861) the Honourable Apex Court has provided guidelines/ factors for consideration while deciding bail application in case of offences punishable with death, imprisonment for life or imprisonment for ten years, which are (i) Benefit of reasonable doubt (ii) Identity of accused (iii) Role attributed to each of accused




and part allegedly play by accused in occurrence (iv) His presence at spot (v) question of vicarious liability (vi) Allegation mentioned in F.I.R. (vii) Statements of prosecution witnesses recorded under S. 161 Cr. P.C., (viii) Other incriminating material collected by prosecution and (ix) Plea raised by accused.

7. In the instant case, so far as the allegation against the applicant is concerned, the role of causing hatchet bellows to Mst. Shamshad has been attributed to her husband/ co-accused Fakir Muhammad, whereas the role attributed to the present applicant is that he had facilitated the said co-accused by holding Mst. Shamshad. The question of vicarious liability of the applicant with regard to the commission of his intention with co-accused for causing hatchet bellows to his wife and its further extension to the result that followed i.e. her death, will have to be determined at the trial to see if guilt of applicant under section 304/34, P.P.C. is established as alleged by the prosecution; especially, under the circumstance when the applicant has already been exonerated from the charge in subsequent enquiry conducted by the CIO, City Shikarpur on the order of DIGP, Larkana. Under the circumstances, I have found the case of the applicant is of further inquiry as envisaged under sub-section 2 of Section 497 Cr. P.C.

8. I, therefore, allow this application, the applicant / accused is admitted to bail, subject to his furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs Only) and PR Bond in the like amount, to the satisfaction of trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits and if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.


09/11/2015.
JUDGE