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

Crl. Misc. Appln. No.S-123 of 2016

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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19.12.2016.

1. For orders on office objections.
2. For Katcha Peshi.

Mr. Saeed Ahmed B. Bijarani, advocate for applicant/complainant.

Mr. Muhammad Murad Chachar, advocate for respondents No.1 & 2/accused.

Mr. Khadim Hussain Khooharo, DPG.

By means of this criminal miscellaneous application filed under Section 497(5), Cr.P.C, the applicant/complainant seeks cancellation of bail granted to respondents No.1 & 2/accused vide order dated 28.9.2015 by the learned Sessions Judge, Kashmore at Kandhkot in Criminal Bail Application No.313/2016 arisen out of Crime No.73/2016 registered at Police Station Buxapur, District Kashmore at Kandhkot, under Sections 302, 34, PPC.

The learned Counsel for the applicant/complainant contends that the respondents No.1 and 2/accused have committed murder of cousin of complainant, namely, Samandar and their names were taken by complainant Abdul Hameed in his further statement and by the P.Ws, namely, Dilshad and Giyandar, who were also present with the complainant at the spot. He further submits that besides filing Crl. Bail Application No.313/2016, the respondents No.1 & 2/accused also filed Crl. Bail Application No.283/2016, which was subsequently withdrawn by them and thereafter they filed second Criminal Bail Application bearing No.293/2016 and same was disposed of by learned Sessions Judge, Kashmore at Kandhkot, hence third successive bail application on same grounds was not maintainable in law. In support



of his contentions, learned Counsel for the applicant/complainant relied upon the case of *Amir Masih vs. The State and another* (2013 SCMR 1059) and *Riaz alias Mabdal vs. The State and another*, (PLD 2013 Lahore 646). Lastly, learned Counsel for the applicant/complainant contends that there is sufficient evidence against the respondents No.1 & 2/accused to connect them with the commission of the alleged offence, therefore, the bail granting order passed by the learned Sessions Judge is patently illegal, which is liable to be set aside and bail granted to the respondents No.1 & 2/accused should be cancelled.

On the other hand, learned Counsel for respondents No.1 & 2/accused contends that there is delay of 8 days in lodging of the F.I.R; that complainant and both P.Ws, namely, Dilshad Khan and Giyandar, who claim to have seen the faces of respondents No.1 & 2/accused at the spot had not disclosed the names of the respondents No.1 & 2/accused to complainant at the time of lodging of the F.I.R and after lodging of the F.I.R the complainant has subsequently recorded further statement wherein he has first time named the respondents No.1 & 2/accused, so also PWs Dilshad Khan and Giyandar, who claim to be present alongwith applicant/complainant have implicated the respondents No.1 & 2/accused in their statements u/s 161, Cr.P.C recorded on the 9th day of the incident, hence considering the case of the respondents No.1 & 2/accused as one of further inquiry, learned Sessions Judge has rightly held them entitled to concession of bail. With regard to the withdrawal of first bail application and disposal of second bail application, the learned Counsel for respondents No.1 & 2/accused contends that the first bail application bearing No.283/2016 filed by the respondents/accused was withdrawn by them as by that time challan was not submitted by the prosecution and the second bail application bearing No.293/2016 was disposed of by the learned

Sessions Judge considering the bail application as premature on the statement of DPP as at that time also challan had not been submitted and the investigation was in progress; however, while disposing of the bail application the learned Sessions Judge, Kashmore at Kandhkot observed that the respondents No.1 & 2/accused may repeat the same after completion of investigation, hence after challan third bail application was filed by them, therefore, the case law cited by the learned Counsel for the applicant/complainant being distinguishable so far the facts and circumstances of present case are concerned, are not applicable. In support of his contentions, he has relied upon the case of *Muhammad Akram v. Zahid Iqbal and others* (2008 SCMR 1715).

Learned DPG while adopting the arguments of learned Counsel for respondents No.1 & 2/accused, submits that no case for cancellation of bail has been made out by the applicant/accused, therefore, this application is liable to be dismissed. He further submits that although P.W Giyandar claims to be resident of the village Suhrab Khan Jakhrani, where the respondents No.1 & 2/accused are shown to be residing, yet he did not disclose their names to the applicant/complainant at the time of lodgment of F.I.R.

It is an admitted fact that the alleged incident took place on 08.8.2016 and the F.I.R has been lodged after delay of 8 days i.e. on 16.8.2016, wherein though the applicant/complainant claims to have seen the faces of the unknown accused but he did not implicate them by names in the F.I.R, so also presence of P.Ws Dilshad Khan and Giyandar has been shown in the occurrence, but even after 8 days of the alleged incident they were unable to disclose the names of accused/respondents No.1 & 2. Considering the above facts, the learned Sessions Judge has granted the bail to respondents No.1 & 2/accused by observing that their names do not find place in the F.I.R which was

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registered after 8 days of the incident and same has come on record during statements of PWs u/s 161, Cr.P.C on the next day of registration of F.I.R, hence the case of respondents No.1 & 2/accused was held to be falling within ambit of subsection (2) of Section 497, Cr.P.C.

It is now well-settled principle of law that for cancellation of bail strong and exceptional grounds are required and normally superior Courts do not interfere with the orders relating to the grant of bail particularly in the case of murder when the trial was to commence so as to avoid discussion and remarks on the merits of the case. The impugned order does not suffer from any illegality and the same is not factually incorrect, which has been passed by the learned Sessions Judge with the sound reasoning, therefore, the same does not require any interference of this Court. This criminal miscellaneous application is, therefore, dismissed being devoid of the merits.



JUDGE