

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

Criminal Bail Application No.835/2014

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing

30.5.2014

Mr. M. Ashraf Kazi, Advocate for the Applicant.
Mr. Abdullah Rajput, A.P.G.

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This bail application has been filed by accused Khurram son of Lal Muhammad Lakho, since the learned IInd Additional Sessions Judge, Thatta, by order dated 18.4.2014 has declined his bail in FIR No.38 of 2013 under section 23(i)-A Sindh Arms Act, 2013 of P.S Gharo, District Thatta.

Brief facts of the case as narrated are that the Complainant namely Ghulam Abbas, on 27.7.2013 lodged FIR No.80/2013, under Section 302/109/34 PPC, at P.S Makli, District Thatta, regarding the murder of his son Muhammad Rafiq Jalbani, and nominated accused persons Zulfiqar Jokhio, Habibullah Memon, Sattar Brohi and others instigator Dr. Shoaib and contractor Bashir. However, after sixteen days of lodging the said FIR, the complainant change his instance and again approach the police as transpired from police diaries.

According to the case diary dated 13.8.2013, the SHO, SIP Raja Abdul Haque / Investigating Officer, recorded diary is as under:-

It is stated that today we were present at P.S Complainant of this crime came there and after exchanging views, he disclosed that Khurram s/o Lal Muhammad Lakho R/o House No.4 Sachal Goth Karachi, was annoyed with his son. He himself has investigated and enquired that his (complaint's) son Rafique was murdered by Khurram Lakho. On the basis of the information of the Complainant, the police, after delay of Sixteen Days on 13.8.2013 submitted the supplementary daily case diary, on a fast track reached Karachi, Sachal Village, swiftly arrested the applicant. They prepared Mashirnama of arrest. The police claims that the applicant had killed the deceased. The applicant had thrown the crime weapon in the open jungle on road at Gharo, Thatta close to a CNG Station. Accordingly on 14.8.2013 at midnight at 03:30 AM, the police

recovered at the pointation and searched the Devi Bushes and found one pistol. The police on the seizure of the pistol checked it, which contained a magazine in which five live bullets were loaded and prepared memo of recovery of pistol + arrest in the arms ordinance.

Learned counsel for the applicant urged that there are no reasonable grounds to believe that the applicant had committed any offence, punishable with 14 years, however there are reasonable grounds to believe that no recovery has been affected from the applicant by the police. Learned counsel further contended that from the facts of the case, it is quite clear and evident from the provision of Section 3 read with Section 23(a) of the Sindh Arms, Act, 2013 are not applicable to the present case, for the reasons that the prosecution has failed to establish from their own case that the applicant had not acquired, possessed, carried or controlled any firearm/crime weapon. Therefore, provision of Section 3 and 23 (a) of the Sindh Arms Act, 2013 shall not apply on the applicant therefore, the case against the Applicant falls under section 497(2) Cr.P.C. FSL report has also come in negative which is available at page 79 of the file. The case of the applicant requires further inquiry, therefore, applicant may be released on bail.

Learned APG has strongly opposed the grant of bail on the ground that weapon has been recovered on the pointation of the accused.

I have heard the learned counsel for the applicant and learned APG and observed as follows:-

- i. Applicant was arrested on 13.8.2013 initially in FIR No.80/2013 after 16 days on the change of statement of the complainant. The manner and circumstances of the arrest of the accused was dubious since the accused nominated in the FIR No.80/2013 have not been arrested and the applicant was not nominated in the FIR No.80/2013.

- ii. The time of recovery of pistol is 0330 hours and place of recovery is a jungle of NHW road from Karachi to Gharo, and one of the mashir of recovery is resident of Gulistan-e-Jauhar Karachi, which suggests that mashir was procured as there is no likelihood of the presence of any person after midnight in the jungle of Makli at the time of recovery. The recovery of pistol is doubtful.
- iii. The recovery of pistol from the jungle of Makli on the alleged pointation of the applicant is also of no consequence since FSL report available at page 79 of the file clearly states that the weapon so recovered was not used in crime No.80/2013.
- iv. The fact that no weapon was found in the custody of the applicant at the time of his arrest the registration of FIR No.38/2013 since pistol was recovered from jungle of Makli, prima facie takes the case of the applicant out of the purview of Section 3 read with Section 23(i) of the Sindh Arms Act, 2013.
- v. The accused was arrested on 13.8.2013 and challan has already been submitted in Crime No.38/2013 and as such custody of applicant is not required for further investigation by the police.

In view of the above observations the accused applicant has made out a case for further inquiry, therefore, bail application is allowed and the Khurram son of Lal Muhammad may be released on bail subject to furnishing solvent surety in the sum of Rs.1,00,000/- and P.R bond in the like amount to the satisfaction of the trial Court. The observations made herein are tentative in nature and will not affect the outcome of the main case before Trial Court.

JUDGE