

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Bail Application No.547 of 2015

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DATE            ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing  
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**05.06.2015**

Syed Saeed Hasan Zaidi, advocate for applicant  
Mr. Abrar Ali Khichi, A.P.G. Sindh  
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Through instant bail application, applicant/accused Zafar Ali Khan son of Sultan Khan seeks bail after arrest in FIR No.248/2014, registered at police station Awami Colony, East Karachi under Sections 302/34 PPC.

2. Briefly the facts leading to the prosecution case as disclosed in the FIR are that on 22.07.2014 upon receipt of information, SIP Chaudhry Ghazanfar Ali left the police station and proceeded to place of incident, i.e street opposite Maddressah Arabia Taleemul Quran, Gulshan-e-Bilal, Sector-9, KIA, Karachi, where he was informed that one unknown lady has been killed by some unknown person and his dead body has been shifted to Jinnah Postgraduate Medical Centre, Karachi. Thereafter SIP reached JPMC where he found dead body of a woman aged about 30/31 years, upon inspection of the dead body it revealed that she sustained injuries on her head and the bullet was in back side of her shoulder. Blood was oozing from her head and nose. After completion of all required formalities dead body was shifted to Edhi Mortuary at Sohrab Goth, Karachi, and FIR under Section 302/34 PPC was registered against unknown persons. On 28.10.2014 present applicant was arrested and final challan was submitted in Court on 10.11.2014.

3. The applicant filed bail application before the Court of Sessions, which was dismissed vide order dated 05.01.2015 by the IV<sup>th</sup> Additional Sessions Judge Karachi East. Upon receipt of copies of statements of PWs and other documents, bail application was repeated which was also dismissed vide order dated 22.04.2015. Thereafter, the applicant approached this Court for grant of post arrest bail.

4. Learned counsel for the applicant contended that the applicant has been falsely involved in this case. Prosecution has cited 17 PWs in this court, out of which 7 PWs are private persons, who belong to Maddressah situated in the street where the deceased was killed. He argued that 161 Cr.PC statement of PW Izhar Ahmed was recorded on 03.08.2014 in which he stated that on the date of incident he was in his house, upon firing he came out and saw that accused Zafar Ali having pistol in his hand was running and escaped on motorcycle with some unknown persons. In his further statement on Oath recorded on 23.10.2014 he changed his version and stated that his maternal aunt, namely, Javeria, wife of Moulana Yosuf, has actually seen from the window of her house, causing fire arm injuries to deceased by accused Zafar Ali, and at the instance of his said aunt and her husband Moulana Yousuf, he deposed about the commission of murder of the deceased. Learned counsel argued that both the statements of PW Izhar Ahmed are contradictory to each other and create serious doubt in prosecution case. PW Javeria, stated to be an eye witnesses, has also not been examined by the prosecution. He further argued that PWs Moulana Muhammad Ali, Abdul Hafeez, Bilal Ahmed, Fazalur Rehman and Zaman Shah as well as Moulana Yousuf, in their respective statements recorded under section 161 Cr.PC have not implicated the accused in the commission of offence. He further argued that as per prosecution version, the applicant was arrested on 28.10.2014 but neither the mobile phone nor the crime weapon have been recovered from him, hence recovery of three 9MM empties from the place of incident does not connect the applicant with the alleged offence. Learned counsel further argued that applicant has not confessed his guilt and the circumstantial evidence i.e. conversation on mobile phone, application of deceased to P.S. Malir City dated 18.06.2014 against applicant, filing of Suit for dissolution of marriage by way of Khulla, taking shelter in Pannah Shelter Homes, through Court and later on release from there through Court at her own accord, do not connect the applicant with the commission of offence. He lastly argued that no identification parade has been held and the case of the applicant falls under section 497(2) Cr.PC, as such, applicant/accused is entitled to be released by extending concession of bail.

5. On the contrary, learned Additional Prosecutor General Sindh argued that after murder of the deceased present applicant absconded away and he was arrested on 28.10.2014 from Rawalpindi. The deceased was his third wife, due to serious differences between them, the marriage was dissolved after grant of Khulla and after dissolution of marriage accused/applicant harassed and maltreated his ex-wife (since deceased) due to which she also took shelter at Pannah Shelter Home through Court and after her release from there she filed complaint dated 18.06.2014 against the applicant, all such circumstances of the case connects the applicant/accused with the commission of offence and disentitle the applicant for grant of bail. He opposed the bail application.

6. I have carefully heard the arguments advanced by the learned counsel for the parties and scanned the entire record of the case file. It reveals that the incident took place in day time, the place of incident situated in a thickly populated area but no one came forward to become an eye witness. PW Izhar Ahmed in his statement, recorded under section 161 Cr.PC, stated that after firing he came out from his house, he saw the accused, having pistol in his hand, running away and he escaped on motorcycle with unknown persons. Later on, this PW in his further statement recorded under section 161 Cr.PC and stated that he got recorded his earlier statement at the instance of his aunt, namely, Javeria, who stated to have seen the commission of offence. His contradictory statements make the prosecution case doubtful. It is astonishing to note that PW Mst. Javeria, who allegedly claims to be eye witness of the incident, has also not been examined by the prosecution. Per learned counsel for the applicant, other PWs, namely, Moulana Muhammad Ali, Abdul Hafeez, Bilal Ahmed, Fazalur Rehman, Zaman Shah and Moulana Yousuf have also not involved the present applicant in the commission of offence. Admittedly, after arrest of the applicant, no identification parade has been held in this case. Crime weapon has also not been recovered from the present applicant as such in absence of such recovery present applicant/accused cannot be saddled with allegedly recovered 9MM empties. Mobile phone as well as SIM card allegedly involved in this case has also not been recovered. Merely alleged dispute between the

applicant/accused and his ex-wife (since deceased) cannot connect the applicant with the latter's murder without any corroborative piece of evidence.

7. Prima facie, the applicant has succeeded to make out a case for further inquiry into his guilt as contemplated under subsection (2) of Section 497 Cr.P.C. Concession of bail is extended to the applicant/accused Zafar Ali Khan son of Sultan Khan subject to his furnishing solvent surety in the sum of Rs.200,000/- (*Rupees Two Hundred Thousand*) and P.R bond in the like amount to the satisfaction of trial Court.

8. 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/accused on merits.

JUDGE

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