

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr. Bail A. No.S-1430 of 2014.

Date of hearing and decision: 17-09-2015.

Mr. Nihal Khan Lashari, Advocate for the applicant.

Syed Meeral Shah, Deputy Prosecutor General.

Complainant present in person.

NAZAR AKBAR, J: - Through the instant application, applicant Ali Ahmed seeks post-arrest bail in Crime No.110/2014, registered with Police Station Tando Allahyar, under sections 302, 201, 34 P.P.C.

2. Brief facts of the case are that on 17.07.2014 at 1430 hours complainant Muhammad Suhail appeared at Police Station and lodged F.I.R. that on 28.09.2013 at about 08.00 p.m. Ubaid Tonki came at his house and went away taking his brother Danish on motorcycle. At about 11.30 p.m. Ubaid Tonki returned back to home and informed them that he and Danish were sitting at the Otaq of Saleem Sheedi at Unar Para. Saleem Sheedi and other people were also sitting in the Otaq when Danish asked him to give him motorcycle and that he will be returned within 10 minutes but he did not turn back, therefore, he sent message to him but no reply was received and again he called him on phone, but number was switched off. Thereafter, they started search of Danish and made inquiries but could not find his clue. On 30.09.2013 he was informed by his friends on phone from Civil Hospital Tando Allahyar that police has brought a dead body in the hospital and asked him to come. On such information, he and his brother Owais went to Civil Hospital and identified the dead body as of Danish. Police informed that the dead

body was lying in Naseer Wah near Railway Mori. Thereafter, on inquiry complainant party came to know that Samina daughter of Mukhtiar Arain informed that on 28.09.2013 one Wajahat Lakho had given phone number of Danish to her and asked her to call Danish by sending him message. Then, she called Danish, who came at the house of uncle Ali Ahmed (applicant). Thereafter, Ali Ahmed and Wajahat Lakho alongwith unknown persons have murdered Danish and thrown his dead body in Naseer Wah. Thereafter, complainant lodged the F.I.R.

3. Learned counsel for the applicants mainly contended that there is delay of about 10 months in lodging of the F.I.R, which has not been explained plausibly; that this is a case of unseen incident; that no specific role has been attributed to the applicant; that nothing incriminating has been recovered from the possession of the applicant; that no direct evidence is available on record to connect the applicant with the commission of alleged offence; that all P.Ws. are interested and no private and independent person has been cited as P.W. or mashir; that the case of the applicant requires further inquiry as contemplated under section 497(2) Cr.P.C.

4. Learned D.P.G. opposed this bail application, amongst others, on the grounds that the applicant alongwith his companion has committed a heinous offence; that the applicant has been nominated in the F.I.R. with specific role, therefore, he is not entitled for grant of bail.

5. I have given anxious consideration to the arguments advanced by the parties and perused the material available on record.

6. It appears that the F.I.R. is delayed for about 10 months, for which no plausible explanation has been furnished by the prosecution; that per F.I.R, the complainant received information about the incident from co-accused Samina, which is not believable;

that the applicant alongwith two others is charged for the commission of offence but no specific role has been assigned to him; that the tentative evidence available on record makes the case of the applicant as of further inquiry; that mere heinousness of offence cannot be a ground for refusal of bail although the applicant is nominated in the F.I.R. but no specific role has been assigned; that apparently there is no direct evidence is available on record to connect the applicant with the commission of offence; that taking into consideration all these facts and circumstances the applicant's case falls within the ambit of further inquiry as envisaged under section 497(2) Cr.P.C.

7. In view of above, the bail application is allowed, the applicant may be enlarged on bail subject to furnishing solvent surety in the sum of Rs.5,00,000/- [Rupees Five Lac only] and PR bond in the like amount to the satisfaction of trial court.

9. The findings made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of the same while deciding the main case on merits.

JUDGE

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