

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

Cr. Bail A. No.S-532 of 2015.

Date of hearing and decision: 07.10.2015.

Mr. Aijaz Shaikh, Advocate for the applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

Mr. Manzoor Ahmed Panhwar, Advocate files power on behalf of the complainant.

**NAZAR AKBAR, J:** - Through the instant application, applicant Allah Bux seeks post-arrest bail in Crime No.96 of 2013, registered with Police Station Tando Ghulam Hyder, under section 302, 458, 380 and 34 P.P.C.

2. Brief facts of the case are that on 30.11.2013 at about 2200 hours, complainant Vishnu lodged F.I.R. at Police Station Tando Ghulam Hyder, stating that on 26.11.2013, in the evening, after taking meal, he tied the cattle in the cattle pond and went to sleep with his father Sattro Kolhi and uncle Pancho Kolhi in the courtyard of their house on separate cots. On 27.11.2013 at about 0130 hours, on barking of dogs, he and other family members awakened and saw on the light of bulb accused Khadim Lashari, Mustafa Chandio and two unknown persons duly armed with deadly weapons were taking away his buffalo. Complainant party raised cries, which attracted Kirshan Kolhi, Talo Kolhi and others. Thereafter, they chased the culprits and asked them to leave the cattle, but they extended threats of murder and then accused Khadim Lashari made straight fire from his pistol, which hit Sattro Kolhi who fell down on the ground. Thereafter, accused left the buffalo ran way. Injured Sattro Kolhi was

taken to hospital, but in the way he succumbed to his injuries. Thereafter, complainant lodged the F.I.R.

3. Learned counsel for the applicant mainly contended that there is a delay of about 02 days in lodging of the F.I.R, which has not been explained plausibly; that the applicant has falsely been implicated in this case due to enmity with malafide intention; that the applicant has not been nominated in the F.I.R; that no specific role has been attributed to the applicant for causing any gunshot injury to the deceased; that the applicant is behind the bars since his arrest; 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 mere absconsion does not come in the way of the applicant; that co-accused, namely, Porho Chandio, whose case is identical to that of the present applicant, was granted bail by this Court vide order dated 26.09.2014 passed in Cr. B.A. No.S-349/2014, therefore, the applicant is also entitled for the same treatment on the basis of rule of consistency; that the case of the applicant requires further inquiry as contemplated under section 497(2) Cr.P.C. In support of his contention, learned counsel for the applicant relied upon the case of **Mitho Pitafi v. State (2009 S C M R 299)**.

4. Learned A.P.G. as well as learned counsel for the complainant opposed this bail application, amongst others, on the grounds that the applicant alongwith his companions has committed a heinous offence and caused murder of one innocent person, 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. Despite the fact that in the incident father of the complainant had lost his life the complainant party did not bother to lodge a prompt F.I.R. in order to rope the culprits; that also there is a delay of 02 days in lodging of the F.I.R, which has not been explained plausibly; that neither the applicant has been nominated in the F.I.R. nor any specific role has been attributed to him; that co-accused, namely, Porho Chandio, whose case is identical to that of the present applicant, was granted bail by this Court vide order dated 26.09.2014 passed in Cr. B.A. No.S-349/2014; that the bail plea of the applicant was declined by the trial Court on the ground that he was fugitive from law and not on merit. It is well settled that bail cannot be withheld mere on the ground of absconsion if the accused has good case on merit for grant of bail. In the case in hand, the applicant has not been nominated in the F.I.R. therefore, his involvement in commission of the alleged offence requires probe at trial; that taking into consideration all these facts and circumstances the case of the applicant falls within the ambit of further inquiry as envisaged under section 497(2) Cr.P.C.

7. In view of above, the applicant is granted bail subject to 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 the trial Court.

8. 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.

Bail application stands disposed of.

JUDGE

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