

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr.B.A No.1031of 2015

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

For hearing of Bail Application

15.10.2015

Mr. Faisal Ahmed A. Memon, advocate for the Applicant.
Dr. Rana Khan, advocate for Complainant alongwith
Complainant Maqbool.
Mr. Shahzado Saleem, A.P.G.

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This bail application is arising out Crime No.06/2015 under Section 302, 147, 148, 149, 109 PPC of P.S Ketu Bunder @ Baghan District, Thatta.

Brief facts of the case as narrated in FIR No.06/2015 are that complainant father Muhammad Ishaque was on visiting terms with Abdullah @ Budho s/o Haji Allahdino Otho r/o Haji Yousif Otho due to this some villagers have doubt that the complainant's father has illicit terms with woman and it has come to knowledge that a meeting was held in the supervision of Sardar Haji Ameen s/o Haji Ashraf Otho, wherein the father of the complainant declared as KARO and such conspiracy was made and murdered the father of the complainant. ON 7.5.2015 the complainant alongwith his father Ishaque and cousin Umer s/o Husain Khaskheli coming back from Dargah Kher Shah to their village on motorcycle and such road passes besides the village Haji Yousif Otho, when they reached at road at about 2240 hours that five persons armed with weapons were standing there, out of them three persons were identified in the light of motorcycle that everyone (1) Sattar son of Allahdino Otho armed with hatchet (2) Asghar s/o Muhammad Otho (3) Saddam Hussain s/o Haji Allahdino Otho armed with pistol and two unknown persons armed with weapons. The above accused persons signaled them to stop, on that they stopped the motorcycle and showed their weapons, on that accused Sattar, Asghar and Saddam on the force of weapons accompanied the father of the complainant and went on the road side at land of soomar Otho situated in Deh Jamnasar, Taluka Ketu Bunder and unknown accused persons remained stood upon us by aiming weapons, on the seeing of them the accused Sattar gave hatchet below on the left side of head of the father of the complainant and he was raising cries fell down and

accused persons left then and went to the village of Haji Yousif Otho and then they saw that the father of the complainant had died away and then they were trying to arrange vehicle but same was not arranged at instant and then on 08.5.2015 the complainant informed the Baghan police, the police reached at the place of incident and made necessary legal formalities and then with the help of police they took the dead body of Ishaque and went to the Civil Hospital Makli where post mortem was conducted and then the complainant received the dead body of his father Ishaque and such receipt was given to the police and went to the village for his funeral ceremony and buried him. After that the complainant moved such application to the Sessions Judge Thatta and the Hon'ble Court vide order No.CR-2769/16.05.2015 for registration of FIR and got such order and now present and report that the above accused Sattar, Saddam and Asghar Otho and two unknown accused persons by making unlawful assembly having illegally declared as KARO and murdered my father Ishaque and such offence has been committed by the above accused persons on the conspiracy of Haji Ameen Otho and unidentified persons will be identified.

Learned counsel for the applicant contends that applicant is innocent and he was falsely implicated in this case. He further contended that FIR was booked with the inordinate delay of 9 days without any plausible explanation means, the same was registered with due deliberation and consultations whereby false implications could not be ruled out. It was also contended that there is contradictory narrations between the FIR of complainant, further statement of complainant. Learned counsel further urged that the allegation against the accused Haji Ameen is hatching conspiracy and same was misapplied, therefore, section 302 PPC is not applicable on his part. He further contended that case of the accused / application is of further inquiry. He stated that complainant wants to see the accused/applicant behind the bars with ulterior motive and police tried to arrest the applicant in order to show humiliation and disgrace of them, and prayed that accused may be admitted on bail and his interim bail may be confirmed.

Learned counsel for the complainant contended that though the accused is nominated in the FIR with role of abetment, his client has no objection to the confirmation of bail.

Learned APG has supported the arguments of the learned counsel for the applicant and says that he has no objection if the interim pre-arrest bail is granted to the applicant / accused.

I have heard the arguments and perused the record.

Admittedly three accused were nominated for committing murder in the FIR of Ishaque who was father of the complainant eye witness of the murder. The main accused are Sattar, Asghar and Saddam who played active role in commission of offence. However, the name of present accused/applicant was mentioned as conspirator or the person of who hatched the conspiracy of murder of complainant's father Ishaque. Admittedly the applicant was not present at the spot and question of conspiracy has yet to be examined by the Trial Court, the very fact that he was not present at the spot makes the case of the accused for further inquiry, therefore, subject to furnishing additional surety in the sum of Rs.3,00,000/- interim pre-arrest bail granted on 12.08.2015 is confirmed. If applicant/accused fails to furnish additional surety within 15 days this bail shall be deemed to have been rejected.

The observation made is of tentative nature and should not affect the outcome of the main case proceeded before Trial Court.

JUDGE

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