

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-1082 of 2021

Applicant : Kamran Son of Haji Rasool Bux Khoso, through Mr. Aijaz Shaikh, Advocate.

Respondent : The State through Ms. Ramesha Oad, Assistant Prosecutor General, Sindh.

Complainant : Ghulam Murtaza Khan through Mr. Farhad Ali Abro, Advocate.

Date of hearing: **06.12.2021**
Date of Order: **06.12.2021**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicant/accused above named seeks his pre-arrest bail in Crime No.131 of 2021, under sections 302 34 P.P.C, registered at P.S Qasimabad Hyderabad, after his bail plea was declined by the learned Model Criminal Trial Court-I Hyderabad, vide order dated 24.11.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicant/accused is innocent has falsely been implicated in this case, in fact the deceased Mst. Fatima committed a suicide but the family members of the deceased involving the applicant in this case. He further contended that deceased Mst. Fatima was psycho patient and she was under treatment of Dr. Shahnawaz M.K. Dal, she has committed a suicide; that as per DNA report two fingers are available on the churri/dagger but the applicant/accused is not involved in this case; that on the day of incident the applicant/accused reached at his flat situated at Bhitai Apartment Qasimabad Hyderabad where he found the flat was locked and subsequently after taking hectic efforts the flat was opened and saw the deceased Fatima in injured condition and subsequently called the one dispenser who has suggested that she may be sent to hospital for further treatment; that case has been challaned and the

applicant/accused is no more required for further investigation; that in first investigation the applicant/accused was released under section 497 Cr.P.C and in second investigation he was declared as innocent. In support of his contentions, he has produced the certain documents which are also taken on record. Lastly he prayed for confirmation of interim pre-arrest bail.

4. On the other hand, learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh for the State vehemently opposed the confirmation of bail and read-over the statement of applicant/accused recorded under section 161 Cr.P.C in which he has admitted that he has left his mobile phone at his house and thereafter he has seen the deceased Fatima in injured condition and subsequently she was shifted to Hospital. The learned counsel for the complainant further raised the points that she was in injured condition then how she was lying in the balcony and in such situation always people commit the suicide on the bed not on the balcony. He has also produced some pictures in which he has relied that after cutting both the arms then how it was believed to deep cut the neck all shows that there was preplanned murder and in order to save the applicant the CCTV at the premises was closed from 03:19 p.m. to 4:20 p.m. which shows that applicant/accused has tried to destroy the evidence. They lastly prayed for dismissal of instant bail application.

5. I have heard learned counsel for the applicant as well as counsel for the complainant and Assistant Prosecutor General, Sindh having also gone through the material available on record.

6. No doubt the case of the applicant is unseen and un-witnessed and two investigations were conducted and the applicant/accused was found innocent but the learned Magistrate was not agree and took the cognizance of the offence. Otherwise it is settled principle of law that the opinion of the police officer is not binding upon the Courts, as such, sufficient material was available on the record which could connect the applicant/accused with the alleged offence, as such, learned Magistrate has taken the cognizance against the accused.

7. No doubt the name of the applicant/accused transpires in the F.I.R with role that he used to maltreat the deceased Mst. Fatima, as such, on the day of incident he has allegedly committed murder of the deceased and thereafter by staging a drama called the Masi and other persons by showing this is a suicide matter. It is very strange to note here that after the incident neither the applicant/accused called the police nor given any information but he directed his *Masi* to change the clothes of the deceased and so also keep the *churri* or dagger in the kitchen. Things are not ended here the CCTV Camera installed in the flat premises was also found closed from 03:19 p.m. to 04:20 p.m. The place of incident was washed and thereafter the dead body was shifted. Further the presence of the applicant/accused is not denied in the instant case though he has taken instance that he has left the mobile in the flat and CDR report also suggests that the mobile was present in the flat. Man can lie but document cannot. At bail stage only tentative assessment is to be made and as per medical report the deceased has received following injuries as per post mortem examination report:

*“Surface Wounds and Injuries A/1 An incised wound at the middle of Neck Side about 12 cm x 2.5 cm x trachea cut above cricoid cartilage and little bit deep on Left Side of Neck.
2/ Incised wound at the lower 1/3 of right for anteriorly size 6 cm x 1.5 cm x Muscle deep.
03/ Incised wound at the lower 1/3 of the forearm anteriorly size 5.6 cm x 1.5 cm x Muscle deep.”*

8. Learned counsel for the applicant also pleaded malafide on the part of the complainant but from the perusal of record the plea taken by the applicant/accused that she was a psycho patient but in the instant case the report which is after the incident no prior description has been filed.

9. In view of above, the learned counsel for the applicant has failed to point out any ill-will, enmity or malafide ulterior motives on the part of the complainant which is the requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon’ble Supreme Court of Pakistan **[2019 S C M R 1129]** wherein the Hon’ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest

in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

10. In view of above discussion, the bail application is dismissed and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 29.11.2021 is hereby re-called.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE

Muhammad Danish*