

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

Criminal Bail Application No.S-544 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For orders on M.A 4813/18
3. For hearing of main case

15.03.2019.

Mian Taj Muhammad Keerio, Advocate for applicant.

Mr. Saimullah Rind, Advocate for complainant.

Mr. Nazar Muhammad Memon, A.P.G.

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By means of this application, Applicant, who is accused in Crime No.108 of 2014 of P.S Baldia, under section 302, 395 PPC is seeking post arrest bail.

Complainant lodged F.I.R. on 04.12.2014 alleging an incident which occurred on 01.12.2014 whereby applicant alongwith four other accused who are also nominated in the F.I.R. came at the cattle pond of the complainant situated at Phuleli Hyderabad and took deceased Abdul Razzak who was his brother for purchasing buffaloes and to whom the complainant gave Rs.3,35,000/-. But thereafter the deceased did not return and on 03.12.2014 complainant read in Kawish newspaper that a dead body had been found within the jurisdiction of Police Station Baldia, Hyderabad where he went and identified the body to be of his brother having being strangulated with metallic wire. Finally he appeared at Police Station on 04.12.2014 and lodged F.I.R. to the above effect.

Applicant is stated to be juvenile and was arrested on 10.12.2015 and since then he is confined in Youthful Offenders Industrial School, Central Prison, Hyderabad. Uptill now, it is stated that only charge has been framed in the trial and no witness has been examined.

Learned Counsel for the applicant has argued that the applicant is innocent and has been falsely implicated; that this is an unseen incident and co-accused Manzoor who is likewise nominated in the F.I.R. with similar role was let off in the investigation by the police and such recommendation was accepted by the Magistrate concerned, which has not been challenged by the complainant; that the role of the applicant is similar to that of let off accused as such, rule of consistency is applicable.

On the other hand complainant's Counsel and learned Additional Prosecutor General Sindh have opposed bail to the applicant on the ground that the applicant is nominated in the F.I.R.; that previously co-accused Ramzan alias Rano having been assigned similar role had filed Criminal Bail Application No.S-271/2016, before this court which was dismissed.

I have considered submissions of the parties and perused the material available on record. No doubt the applicant is nominated in the F.I.R. but so also let off accused Manzoor against whom similar allegations have been leveled in the F.I.R. The recommendation of the Investigating Officer of the case releasing him was accepted by the Magistrate concerned and that order admittedly has not been challenged by the complainant. Only evidence against the applicant is that the deceased was lastly seen going alongwith him. The question whether the deceased was done to death by the applicant or what is his role in the episode is yet to be determined at the trial. The F.I.R. was registered with a delay, although the complainant came to know of the dead body of his brother on 03.012.2019 after reading Kawish newspaper but he did not immediately rush to the Police Station to register the F.I.R. against the applicant and others on the same day. Bail application of co-accused Ramzan alias Rano was dismissed on 06.04.2017 and almost two years thereafter have gone by but the trial court has not been able to record evidence of even a single witness. In the circumstances, I am of the view that the applicant has been able to make out a case for grant of bail not only on the ground of rule of consistency but also on the ground of further inquiry as well.

Accordingly, this bail application is allowed. The applicant is granted bail on furnishing a solvent surety in the sum of Rs.2,00,000/- (Rupees two Lac) and P.R Bond in the same amount to be executed before the trial court to its satisfaction. Listed miscellaneous application is also disposed of.

The trial court, however, is directed to expedite the trial and conclude it within a period of four months. It is made clear that if the applicant causes delay in the trial, the complainant would be at liberty to move application for cancellation of his bail which shall be decided by the trial court on its own merits without being influenced by this order.

The observations hereinabove are tentative in nature and shall not cause prejudice to either party on merits.

JUDGE