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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Cr.B.A. No.96 of 2016

Muneer
V.
The State.

Date of hearing: 14.3.2016

Date of Order 12.04.2016

Applicant: Through Mr. Umar Farooq, Advocate for the Applicant.

Respondents: Through Mr. Abrar Ali Khichi, APG for State.

ORDER

Mohammed Karim Khan Agha, J.- By this order, we propose to dispose of the bail application moved on behalf of the applicant/accused under Section 497 Cr.P.C. in FIR No.218 of 2014 under Section 393,302,34 PPC lodged at P.S. Defense, Karachi. An earlier bail application moved by the applicant was dismissed by the learned Anti-Terrorism Court No.III, Karachi on 9.12.2015 in Special Case No.399 (iii) of 2014.

2. The brief facts of the prosecution case are that the complainant Khurram Rashid was serving as MT Driver in Pakistan Navy with Captain Iftikhar Ahmed. On 30.4.2014 he drove to PNS Shifa along with Captain Iftikhar Ahmed and Gunman Fayyaz Ali LPM in a Suzuki Cultas Car where after checkup and completion of work from the bank by Captain Iftikhar Ahmed they were driving home when at about 12:15 p.m. they reached Abu Bakar Masjid near Defense Library where they stopped at traffic lights. At that moment, two culprits on a black colour motorcycle, whose ages seemed to be between 32-38 years and were in paint shirt, stopped their bike at the left side of their car, the pillion rider alighted, put out his pistol and knocked the door of the car, while the other culprit came in front of the car. Captain Iftikhar Ahmed opened the door of the car and handed over an envelope containing Rs.500,000/- to the culprit, however the gunman tried to pick up his gun, on which the culprit stood in

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front of the car and made fire on the gunman Fayyaz Ali, who received injuries and the culprits fled away towards Punjab Colony. The complainant took the injured gunman to PNS Shifa Hospital, where the injured gunman succumbed to his injuries. At the hospital police arrived and recorded statement of the complainant, which was incorporated in the book u/s 154 Cr.P.C. According to the prosecution the applicant played a part in this murder and robbery by at least being an accomplice

3. Learned counsel for the applicant/accused argued that the applicant is quite innocent and he has been falsely implicated in the above case with malafide intention and ulterior motive by the police; the above FIR was lodged with an unexplained delay of about 7 hours, which creates doubt in the prosecution story; no role has been assigned in the above FIR to the applicant and the applicant has not been seen in the CCTV camera lying in the Faysal Bank; the applicant/accused has been involved on the false statement of the co-accused for abetment of the offence and even in a murder case an accused would be entitled to bail when he is linked with the murder only through the statement of his co-accused and in this respect he placed reliance on the case of **Kamran Ali etc V State 2001 P.Cr.LJ 503 Kar;**

4. Learned counsel further submitted that no mobile phone was recovered from the possession of the applicant/accused; that uptill now no identification parade has been held in order to ascertain whether the applicant has committed any offence or was seen by any of the witnesses; nothing has been recovered from the possession of the applicant/accused, nor on his pointation. He further argued that the applicant/accused is no more required by the police for the purpose of investigation, interrogation and he has been sent to judicial custody. He next contended that no feature and description of the applicant/accused is mentioned in the FIR to connect him in the alleged commission of offence and as such the applicant is entitled to be enlarged on bail.

5. On the other hand, learned APG emphatically supported the impugned bail order passed on 09.12.2015 by the learned Anti-Terrorism Court No.III, Karachi, which declined bail to the applicant and submitted that the applicant is not entitled for the grant of bail as sufficient material is available against the applicant

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on record to connect him to the offense and therefore the bail application should be dismissed.

6. We have considered the contentions raised by learned counsel for the applicant and the State and perused the record.

7. As per settled law we have only made a tentative assessment of the material placed before us in making this order, which shall not prejudice the case of either party at trial, which shall be decided on merits based on the evidence by the trial court.

8. We agree with the learned counsel for the applicant that it is settled law that an accused can be granted bail even in a murder case when the only evidence against him is the statement of the co-accused. However, this will all depend on the facts and circumstances of each particular case. The gravity of a crime such as this which was a cold blooded murder in broad day light, which would have terrorized the general public and the modus operandi of which has been plaguing the citizens of Karachi cannot be simply ignored i.e. pillion ridden motorcyclists robbing persons (men and women) traveling by car which often leads to serious injury or death on resistance.

9. In any event however, in this case, we are of the view that the statement of the co-accused against the applicant is not the only evidence available against the applicant. The first point to note is that the co-accused, who has implicated the applicant, is his maternal uncle and as such the applicant is directly known and linked to the co-accused, who has no reason to falsely implicate the applicant. Furthermore, and more significantly in our view, the applicant has been caught on the CCTV camera's of the bank from which Captain Iftikhar Ahmed withdrew the money which was later robbed from him at gunpoint around the time when the withdrawal was made. This in and of itself may not be incriminating, but the fact that the applicant does not have an account at that bank leads to the only reasonable inference that he was keeping a watch on Captain Iftikhar Ahmed and was a part of the plan to rob him. This piece of circumstantial evidence when taken with the direct evidence provided against him by his maternal uncle in our view indicates that there are reasonable grounds to believe that the applicant is connected to the offense

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which was a heinous one of cold bloodied murder in broad day light, which would have terrorized the general public.

10. For the reasons mentioned above the bail application is dismissed. However the learned trial court is directed to immediately record the statement of the complainant along with the other PW's and complete the trial within 3 months. If the trial is not completed within this 3 month period due to no delay on the part of the applicant the applicant will be at liberty, if so advised, to move a fresh bail application before this Court based, amongst other things, on any fresh grounds, which may have arisen during the recording of evidence. The office is directed to immediately send a copy of this order to the trial court hearing this case for its attention and compliance

Dated:-12-04-2016.