

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.1759 of 2016

Date	Order with signature of Judge
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1. For orders on office objection at flag "A"
2. For order on M.A No.11930/2016
3. For hearing of bail application.

31.03.2017

Mr. Zeshan Haider, Advocate for the applicant
Ms. Rahat Ehsan, D.P.G.

NAZAR AKBAR, J:- Applicant/accused Ali Muhammad son of Muhammad Ismail seeks bail after arrest in Crime No.47/2014, registered at P.S. Awami Colony, Karachi, for offence under Section 302 P.P.C.

2. Brief facts of the case are that complainant Ali son of Ali Khan on **06.2.2014** lodged FIR at P.S Awami Colony, Karachi stating therein that his mother Shahzadi aged about 60/62 years used to work in an Artistic Millennium factory situated at M-6, Sector 20/1, Karachi. As usual she went to work on 06.2.2014 and in the evening his maternal cousin Ali Akbar son of Muhammad Malook informed him on his mobile phone that his brother-in-law Abdul Karim fired at his mother Mst. Shahzadi w/o Ali Khan, she has been injured and shifted to Jinnah Hospital. The complainant Ali reached Jinnah Hospital where her mother was already in the operation theater and he met ASI Asad Ali, who had accompanied his mother to hospital. Said ASI Asad Ali recorded 161 Cr.P.C statement of Ali at 1015 hours. However, FIR was registered at 2315 hours.

3. The applicant earlier filed bail application before the IVth Additional Sessions Judge, Karachi East, the same was rejected by

order dated 16.11.2016. Thereafter, applicant/accused has approached this Court.

4. I have gone through the record and heard learned counsel for the applicant and the D.P.G.

5. Learned counsel for the applicant has vehemently contended that besides the merit of the case, the applicant is also entitled for grant of bail on statutory ground of delay for more than two years in the prosecution since the date of his arrest. According to him, the trial court has erred in law by not following the Clause (b) of 3rd proviso of Section 497 Cr.P.C in computing the period of statutory delay. The time of statutory delay should have been counted from the date of arrest which is 6th February, 2014 and not from the date of framing of charge i.e 16.3.2015.

6. On merit he has contended that the applicant has been falsely shown arrested on the spot, since not a single witness of his arrest has been from the public, who allegedly had captured the applicant before arrival of the police. He has further contended that even the so-called witness Ali Akbar, who has reportedly informed the complainant, son of the deceased, that deceased had been injured by the applicant did not mention about the arrest of accused on the spot. Therefore, even arrest in connection of this case is doubtful.

7. The State Counsel has opposed this bail application on the ground that the applicant is also involved in another murder case pending before the Court of IInd Additional Sessions Judge, Malir in FIR No.492/2013 which is registered as Sessions Case No.372/2014. She has also argued that the applicant was arrested on the spot by the persons available on the scene and handed him over to police and therefore, he was fully implicated in this case and cannot be granted bail.

8. The counsel for the applicant contended that the applicant is already on bail in the sum of Rs.100,000/- in crime No.492/2013 and he was not named in the said FIR, therefore, he is not previously convicted.

9. I have also called the record of bail in Session Case No.372/2014 as well as complete diary sheets of the Session Case No.1206/2014 in crime No.47/2014 in which case the present bail application has been filed. From the arguments of the counsel and perusal of record I have observed as under:-

- i). Right from the date of arrest i.e 06.2.2014 till date not a single witness has been examined by the prosecution in Session Case No.1206/2014 and the perusal of diary sheet does not reflect that the delay was on the part of the applicant.
- ii). The trial Court has even ordered for stopping salaries of the police officials who were witnesses in the case and issued non-bailable warrants against all PWs. First such order was passed on **5.12.2016** and it is reflected in each and every diary upto **21.03.2017** and therefore, the defence counsel has failed to lead the evidence.
- iii). The I.O first recorded statement of complainant under Section 161 Cr.P.C almost the same was converted into FIR.
- iv). Both contents of FIR and 161 statement are on the basis of a phone call from his cousin Ali Akbar S/O Muhammad Malook, who had taken the injured mother of complainant to hospital, but there is mention of arrest of applicant/accused on the spot at 1840 hours by the people gathered there.
- v) Even Ali Akbar, cousin of the complainant Ali son of Ali Khan have not appeared in the witness box for last three years nor the complainant has been examined.

10. In view of the above, I am of the considered opinion that the applicant/accused is entitled to the bail on the statutory ground. Besides, it is also a case of further inquiry into the manner and method of arrest of accused. Memo of arrest shows that one Mr. Zuberi from cell phone No.0313-3029431 informed the police about firing and arrest of accused by public, but police has not named any one from public in memo of arrest. Nor obtained any CDR of either of witnesses including cousin who informed the son of deceased.

11. In view of the above facts and circumstances, the Applicant/accused Ali Muhammad son of Muhammad Ismail is admitted to bail, both on statutory ground and also on the ground that it is also a case of further inquiry, subject to furnishing solvent surety in the sum of Rs.200,000/- (Two Hundred Thousands), and P.R bond in the like amount to the satisfaction of trial Court.

J U D G E