

Criminal Bail Application No.1586 of 2018

Present: Mr. Justice Nazar Akbar

Versus

Date of hearing : **11.03.2019**

Date of decision : **15.03.2019**

ORDER

2. Brief facts as stated in the FIR are that on 10.10.2008 at 5:30 p.m complainant Bhagwan Das alongwith his nephew Amit Kumar went from Hyderabad to Karachi and on the way, Amit Kumar informed him that one Krishan Chand had called him from Karachi through mobile phone who had to give Rs.600,000/- to him which had been arranged by him. At about 7:30 p.m Amit Kumar informed one Jay Kumar on mobile phone that he reached at the house of Krishan Chand in Karachi. On 11.10.2008 at 09:49 a.m Amit Kumar had talked with his father Ghansham on mobile No.0300-3202777 and informed him that he has purchased vehicle, as Rs.600,000/- were to be paid by Krishan Chand while remaining amount may be sent to him through online. The brother of complainant Ghansham

talked his friend Gulab Dahri who was in Karachi and asked him to contact with his son who had to purchase vehicle and was residing in Shumail Arcade, Gulistan-e-Johar, Block-17, Karachi. The said Gulab Dahri contacted with Amit Kumar, who informed him that he is available at his flat and asked him to reach at the gate of Shumail Arcade and call him and he will come down. At about 10:30 a.m. Gulab Dahri reached at the pointed place and made call to Amit Kumar but he has not attended his call, therefore, Gulab Dahri informed the brother of the complainant Gansham, who advised him to return back and in the meanwhile brother of the complainant has repeatedly contacted his son Amit Kumar but no response was received, therefore, Ghansham again made the call to Gulab Dahri and asked him to go on the flat of Amit Kumar and check him, on which Gulab Dahri came at ground floor and found Union members available there who inquired him about his identity on which he disclosed that he had come at flat No.F-402 to meet Amit Kumar being friend of his father and told them whole story. The said union members informed him that some time ago they had heard fire arm shot from the said flat. On receiving such information, Gulab Dahri informed Ghansham who informed his relative and friends and they also reached at the said flat and the police also reached there and when the door of the said flat was opened, they found dead body of Amit Kumar on the floor of the bedroom beside bed. After completing legal formalities, the dead body was handed over to legal heirs, who took him to Nawab Shah and after completing funeral ceremony, when complainant came to Karachi, he came to know that one Pheromal s/o Chandomal had got registered FIR showing himself to be maternal uncle of deceased. Therefore, the complainant also lodged FIR against Krishan Chand and Muhammad Sabir (present applicant).

3. Learned counsel for applicant has contended that the applicant/ accused is innocent and has been falsely implicated in this case. He further contended that complainant and eye witnesses have not supported the prosecution case. He further contended that the incident took place at daylight time in a flat but no neighbor was cited as witness in this case. He argued that the victim had died on 04.11.2008 but mashirnama of recovery of photos and raid on applicant/accused was conducted on 29.12.2008 without any justification, therefore, the case of applicant/accused at this stage requires further enquiry and prayed that the applicant/ accused is entitled for grant of bail. In support of his contention, learned counsel for the applicant has relied upon the following case-laws:-

- i. *Mitho Pitafi vs. The State* (**2009 SCMR 299**);
- ii. *Muhammad Naveed vs. The State* (**2014 P.Cr.L.J 1548**);
- iii. *Muhammad Khan alias Muhammad Bux vs. The State* (**2015 P Cr.L.J 69**);

4. On **11.03.2019** Mr. Muhammad Hanif Kashmiri, advocate for complainant was not present in morning, however, since the order was reserved, he came in Court after tea break and made submission on behalf of the complainant. He opposed the bail on the ground that the applicant has been absconding and in statement under Section 164 Cr.P.C he has been identified by the chowkidar of the flat and, therefore, there is likelihood of his involvement in this case, however, he concedes that none of the person found causing any fire arm injury to the deceased nor any one of them was eye witness of the incident.

5. Ms. Rahat Ahsan, Additional P.G for the State has vehemently opposed the bail application on the ground that the applicant/ accused has named in the FIR.

6. I have considered the arguments advanced by the learned counsel for the parties, perused the record as well as examined the contents of FIR and challan. From perusal of record I have noticed that:-

- i. There are two FIRs of one incident. First FIR No.781/2008 was registered by Phero Mal maternal uncle of deceased which was registered against unidentified persons and the other FIR No.794/2008 was registered by Bhagwan Das, uncle of deceased against the applicant/accused and co-accused Krishan Chand.
- ii. The first FIR No.781/2008 was registered on very first day, while the other FIR No.794/2008 was registered on 14.10.2008 after three days delay.
- iii. Two versions of two FIRs of same incident have come on record and which version is correct is yet to be determined at the trial. A case of two FIRs of same incident renders the case against the applicant a case of further enquiry.
- iv. The applicant/accused himself has surrendered himself before the trial Court and obtained bail before arrest and he was arrested only after his bail before arrest was not confirmed, therefore, he had never been absconding.
- v. No incriminating article was effected from the applicant/accused to support prosecution story as narrated in the FIR that at the time of alleged incident the applicant/accused was armed with weapon.
- vi. The case-law relied on the effect of absconsion of accused and case of two versions of same incident quoted above squarely cover the case of the applicant.

7. In view of the above facts and circumstances, the case of the applicant is one of further enquiry and the applicant has made out a case for bail. Consequently, instant bail application is allowed. Applicant Muhammad Sabir son of Jamat Ali is admitted to bail

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subject to furnishing solvent surety in the sum of **Rs.200,000/-** and P.R bond in the like amount to the satisfaction of trial Court.

8. Needless, to mention here that the observations made hereinabove are tentative in nature and should not influence trial Court while deciding the case of the applicant/accused.

JUDGE

Karachi
Dated:15.03.2019

Ayaz Gul