

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

Cr.Bail.Appl.No.S- 1078 of 2018

Date of hearing: 21.02.2019.

Date of order: 21.02.2019.

Mr. Mian Taj Muhammad Keerio, Advocate for applicants.
Mr. Shahid Ahmed Shaikh, D.P.G. for the State.

ORDER

ZULFIQAR AHMED KHAN, J: Through instant criminal bail application, applicants seek post arrest bail in Crime No.10/2018, registered at Police Station Balu Ja Kuba District Shaheed Benazirabad, under sections 302, 311, 34 PPC.

2. Precisely, facts of the prosecution case are that complainant SIP Ahmed Ali Khaskheli SHO P.S Baloo Ja Quba lodged FIR on 16.05.2018 at 2200 hours stating therein that on the eventful day he was available at the P.S when one Akbar S/o Mitho Khan Khoso informed him through mobile phone that his brother namely Sikandar Ali and nephew Abdul Sattar Khoso by firing from repeater upon his daughter Mst. Aamil aged about 14/15 years committed her murder by leveling allegations that she was Kari with one Muhammad Hanif and they runaway. On such information, complainant alongwith his staff went to point place and reached at village Sain Bux Khoso near house of Ali Akbar Khoso where Ali Akbar himself met with complainant party and on his pointation complainant saw that in the courtyard of house the dead body of one girl was lying on the ground in turned position for which Ali Akbar disclosed that it was the dead body of his daughter Mst. Aamil thereafter complainant after completing the formalities, brought the dead body

at PMCH Nawabshah and after conducting the post mortem of dead body, it was handed over to her father Ali Akbar and the complainant asked him for registration of FIR but he denied by saying that all accused are his relatives hence he did not lodge the report against them. Then the complainant returned to PS where such FIR was lodged on behalf of the State.

3. At the outset, learned counsel for the applicants, *inter alia*, contends that the applicants are innocent and they have falsely been involved in the case in hand by police; that there is delay of more than 13 hours in lodging the FIR without any explanation; that the alleged offence is unseen; that the complainant received call from father of the deceased and he was accompanied with the complainant during postmortem but he did not lodge the FIR and complainant himself lodged FIR on behalf of the State with malafide intention and ulterior motive even none from the inmates of the deceased came forward to register the FIR; that neither the complainant nor the witnesses were available at the place of incident and on the basis of hearsay evidence the applicants have been nominated in the case in hand; that the I.O. recorded the statements of complainant and witnesses after a delay of 25 days of registration of the FIR which clearly makes the prosecution case as doubtful and false implication of the applicants cannot be ruled out; that no specific role of causing any injury has been attributed to the applicants / accused in the commission of offence and it is yet to determined at trial that who caused fire shot; he lastly contended that all the PWs sworn their affidavits and recorded no objection for grant of bail to the applicants / accused before the trial Court. In support of his contentions he has placed reliance on the cases reported as **2009 SCMR 448, 1991 SCMR 111 and 1979 SCMR 26.**

4. On the other hand, learned DPG opposed the instant bail application on the ground that applicants/accused are nominated in FIR with their specific

role of causing firearm injury to the deceased on the allegation of her character who died at the spot hence they are not entitled for concession of any relief.

5. I have heard learned counsel for the parties and perused the entire material available before me.

6. *Prima facie*, a bare perusal of the FIR reflects that father of the deceased was present at the place of incident and on his call the complainant arrived at the place of incident and lodged the FIR but the question here arises that why the father of deceased himself did not become the complainant in this case which requires further inquiry. Apparently there is delay of more than 13 hours in lodging of the FIR without any plausible explanation. Moreover neither the father of deceased nor any other inmates of the house came forward to lodge the report which seriously create a doubt in the case of prosecution and this aspect of the case only can be determined at the trial after recording some evidence. Record reflects that statements of the father, mother and sister of the deceased have been recorded after a delay of 25 days of registration of the FIR. Apparently, no specific role has been assigned to both the applicants/accused in the commission of offence and it is yet to be determined that who made fire upon the deceased. All the PWs have sworn their affidavits before the trial Court and recorded no objection if bail is granted to the applicants/accused. Case has been challaned and the applicants/accused are no more required for further investigation nor the prosecution has claimed that they are hardened and desperate criminals or involved in any other case/crime. There is nothing on the record that why one Muhammad Hashim was involved in the case in hand and on whose pointation who was subsequently let off by the police by putting his name in column No.2 of the challan. Even Muhammad Hanif with whom it is alleged in the FIR that deceased had illicit terms, has not been included in the

investigation so that truth should have come out. It has also come on record that 161 Cr.P.C. statements of the PWs have been disowned by them by saying that they have neither got recorded such statements nor signed on it nor there is any mention of 164 Cr.P.C. statements of PWs. Even they have disowned the contents of FIR. The entire case of the prosecution seemingly is an unseen incident. The case law cited by learned counsel for the applicants seems to be helpful to the case in hand as in the case reported as Muhammad Najeeb v. The State (2009 SCMR 448), it has been held by the Honourable Supreme Court of Pakistan as under:-

“We have considered the contentions raised at the Bar and have also gone through the material brought on record in minute particulars. Though initially petitioner was nominated in the F.I.R. by the complainant as an accused but later on through affidavit he stated that he is satisfied with regard to the innocence of the petitioner and does not want to proceed with the matter. This aspect of the matter has not been taken into consideration by the Courts below. We without touching the merits of the case are of the view that case of petitioner is of further inquiry. Accordingly, this petition is converted into appeal and is allowed. Appellant Muhammad Najeeb is granted bail subject to furnishing surety in the sum of Rs.2,00,000 (Rupees two lacs) with P. R. bond in the like amount to the satisfaction of the trial Court.”

07. Keeping in view the above given circumstances, *prima facie*, applicants have succeeded to bring their case within the purview of subsection (2) of section 497 Cr.P.C, for this reason, they were admitted to post arrest bail subject to their furnishing solvent surety in the sum of Rs.75,000/-(Rupees seventy five thousand) each and P.R Bond in the like amount to the satisfaction of trial Court by my short order dated 21.02.2019 and these are the reasons whereof.

08. The observations made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of them while deciding the case of the applicants on merits.

JUDGE

Tufail/PA