

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

Criminal Bail Application No.S-513 of 2017
[Suhail Ahmed Agha v. The State]

Criminal Bail Application No.S-948 of 2017
[Agha Ehsan v.The State]

Date of hearing: 12.04.2019.

Date of decision: 12.04.2019.

Applicants: Suhail Ahmed Agha through Mr. Ghulam Sarwar Baloch, advocate in Cr. B.A. No.S-513/2017.
Agha Ehsan through Mr. Ejaz A.Awan, advocate in Cr. B.A. No.S-948/2017.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh along with Dr. Liaquat Ali Siyal, Senior Medical Officer, Central Prison, Hyderabad.

Complainant: Arz Muhammad through M/S. K. B. Lutuf Ali Leghari and Noor Ahmed, advocates.

ORDER.

Fahim Ahmed Siddiqui, J: Since the pre-arrest bail moved on behalf of applicant Sohail Ahmed Agha [Cr. B.A. No. 513/2017] and post arrest bail moved on behalf of the applicant Agha Ehsan [Cr. B.A. No. 948/2017] are preferred in one and same crime i.e. FIR No. 90/2017 of PS Qasimabad under Sections 302 & 114 PPC; therefore, it will be appropriate that both these bail applications be disposed of with this single order.

2. I have heard the arguments advanced from either side and perused the available record as well as case laws cited before me. After getting enlightened by the valued submissions made before me and scanning the available record, I have observed as under:

- (a) The allegations against the applicants are that due to business dispute, they along with other co-accused have taken part in the murder of deceased Abid Ali Chandio [brother of complainant]. The specific allegation against the applicant

Sohail Ahmed Agha is that he instigated the remaining accused for causing murder while allegation against the applicant Agha Ehsan is that he caught hold of deceased after falling him down so that the main accused may accomplish his task.

- (b) As per allegations in the FIR, the deceased was doing milk business and he had some business transactions with accused Ashfaq alias Babu and Agha Ehsan but apparently there was no business transaction as alleged against the applicant Agha Sohail.
- (c) The allegation levelled against the applicant Agha Sohail in FIR is that he instigated the main accused for causing murder. Such allegation itself is hard to believe specially when there is no allegation of business transaction with applicant Agha Sohail.
- (d) If applicant has no dispute with the deceased regarding any business transaction the involvement of applicant in this fashion attracts not only the possibility of false involvement but also it attracts ulterior motive regarding his involvement in this case.
- (e) The FIR speaks about some business transaction but the nature of business transaction is not mentioned within the body of FIR.
- (f) There is delay of several hours in lodging of FIR, which is sufficient to attract the possibilities of deliberation and consultation before lodging FIR.
- (g) The daily diary of police station indicates that firstly an entry being Entry No. 30 was placed at police station regarding the incident by one Manzoor Ali at 7.00 a.m. and in the said Entry the names of applicants have not been mentioned as accused rather no name is mentioned therein.
- (h) Per learned counsel for the applicants, said Manzoor is the uncle of complainant Arz Muhammad and as per police file, the dead-body was handed over to said Manzoor at 9.00 a.m. in the hospital while complainant Arz Muhammad lodged FIR at 11.00 a.m.
- (i) The allegation against the applicant Agha Ehsan is that he grappled with the deceased and caught hold of him after falling him down to provide assistance to main accused but it

reflects from the record that few months ago, the applicant Agha Ehsan suffered a stroke, which affected the right side of his body. This fact transpires from Discharge Summary issued by Department of Neurology, Aga Khan University Hospital, Karachi, which indicates that he was admitted in the hospital on 14.08.2016 and discharged 16.08.2016.

- (j) As per medical certificate issued by Medical Board, has observed as; "The chairman & members of Special Medical Board are of the unanimous opinion that Accused Agha Ehsan s/o Agha Niaz Ali is known case of stroke (CVA). On clinically & radiological ground there is no general physician issue, no cardiac issue. He is further advised for Rehabilitation (physiotherapy) for three months."
- (k) Since there is a discrepancy in the certificate issued by Senior Medical Officer of Jail regarding affected side of accused Agha Ehsan; therefore, the Senior Medical Officer was called. In response to a query he submits that he has inadeptly mentioned 'left side' but the accused is suffering from stroke of right side and he remains on wheel chair.
- (l) From such report which says accused is a known case of Stroke (CVA), it creates doubt about the part played by accused in the commission of offence, as described by the complainant in the body of FIR.

3. In view of the above observation, I am confident that a case of confirmation of bail has been made out in favour of the applicant Sohail Ahmed Agha while a case of post arrest bail has been made out in favour of the applicant Agha Ehsan, as such, he is entitled to post arrest bail in the instant case.

4. The ultimate outcome of the above discussion is that the interim pre-arrest bail granted to the applicant through order dated 04.07.2017 was confirmed on the same terms and conditions while the applicant Agha Ehsan was admitted to post arrest bail subject to furnishing surety of Rs. 3,00,000/- [Rupees three hundred thousand] only and PR bond in the like amount to the entire satisfaction of trial Court through my short order dated 12.04.2019 and these are the reasons for the same.

5. Before parting, I would like to make it clear that if the applicants after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicants become absconder and they have chosen to be fugitive to law, then the trial Court is fully competent to take every action

against the applicants and their sureties including cancellation of their bail without making a reference to this Court.

JUDGE

Dated 16.04.2019.

Abdullah Channa/PS