

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1974 of 2017

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 16.02.2018
Decided on : 16.03.2018
For Applicants : Mr. Intikhab Ahmed, Advocate
For State : Ms. Rubina Qadir, APG alongwith complainant.

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 1241/2017, by the trial Court, vide order dated 07.12.2017, the applicants, namely, Muhammad Qasim son of Hanif and Mohammad Waqar son of Ismail have approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case crime No. 34/2013, under Section 302/34 PPC, registered at P.S. F.B.I.A, Karachi.

2. Story of the prosecution in nutshell is that complainant Masood Malik lodged FIR on 13.04.2013 at about 0110 hours on the basis of statement recorded under Section 154 Cr.PC, wherein he narrated that he is doing his business in the name and style of "Golawala workshop" at Preedy Street. On 12.04.2013 at about 1015 PM, he was present at his house and received a phone call of his brother namely Babar Malik, who stated that immediately come down, he reached promptly at shop of his brother-in-law namely Habibullah Qureshi son of Sibgatullah Qureshi, situated at Gulshan-e-Amin Plaza in the name of "Bismillah Cool Centre" when he reached at the shop he saw there rush of people outside the shop and one employee of the shop namely Muhammad Zahid son of Muhammad Sadiq was lying outside the shop in pool of blood and his brother in law Habibullah Qureshi was also lying inside the shop in pool of blood, they were shifted to Abbasi Shaheed Hospital in an ambulance, but while shifting to hospital both the injured succumbed to their injuries. He further stated that he came to know that his brother in law Habibullah and Muhammad Zahid were murdered by one unknown accused due to unknown

reasons, who came on motorcycle wearing helmet and made fires upon them with firearm weapon.

3. Learned counsel for the applicants/accused has argued that the applicants/accused are not nominated in the FIR; that no evidence is available to prosecution against the applicants/accused and the prosecution story is built on surmises and conjectures; that the FIR was lodged in the year 2013 and afterwards the report was submitted in "A" Class; that as per prosecution case both the applicants/accused confessed their guilt before the Police, which has no value in the eyes of law as per article 38 & 39 of Qanoon-e-Shahadat Ordinance 1984; that the second piece of evidence collected by the prosecution against the applicants/accused is their pointation of place of incident, whereas such piece of evidence is also liable to be discarded as per article 40 of Qanoon-e-Shahadat Ordinance 1984; that last piece of evidence against the applicants/accused is matching of crime empties of 30 bore pistol collected by the police from the place of incident on 13.4.2013 with the TT pistol recovered from the possession of applicant/accused Mohammad Waqar on 11.2.2017 and such piece of evidence is corroborative in nature and in absence of any other incriminating material it has no value, therefore, the case of applicants/accused persons is well within the ambit of section 497 (2) Cr.PC for further inquiry; that the investigation has been completed and applicants/accused are no more required for investigation. He lastly prayed for grant of bail. In support of his arguments, he relied upon the case laws reported in 2003 YLR 2086 Lahore, 2014 YLR 877 Lahore and 1992 MLD 432 Karachi

4. Learned A.P.G has strongly opposed this bail application on the ground that per FSL report empties recovered from the place of incident have been matched with the pistol recovered from the possession of applicant/accused Waqar and the place of incident was also pointed out by the accused persons. Per A.P.G, both accused confessed their guilt before police and the case against applicant/accused Qasim is attracted under Section 109 PPC as according to the statement of the accused/applicant Waqar, he murdered the deceased Habib and Zahid on

direction of co-accused/applicant Qasim. Lastly, she prayed for dismissal of this bail application.

5. I have heard the learned counsel for the applicants/accused and learned A.P.G. at some length.

6. After hearing arguments and perusal of the record, it reveals that no doubt no one was nominated in the present FIR as accused and initially the I.O has submitted charge sheet in this crime under "A" Class, but later on when the applicants/accused had been arrested by the police of AVCC in cases of recovery of weapons under Section 23(1)-A, of Sindh Arms Act, during investigation of said crimes they confessed their guilt of committing double murder of deceased namely Habib and Zahid. Confession before Police during investigation has no evidentiary value in the eyes of law under Article 38 and 39 of Qanoon-e-Shahadat Ordinance, 1984 and case laws reported in 2017 P.Cr.LJ 1198 and 2008 SCMR 841 supported this version but in the instant case, empties which were secured from the place of incident and got tested from FSL had been matched with the weapon recovered from the possession of applicant/accused Waqar. This corroborative evidence i.e. FSL report against the applicant/accused Waqar prima facie connected him with the present crime. Article 40 of Qanoon-e-Shahadat is the only exception to Article 37, 38 and 39, which shows as to how much of information received from accused can be proved. It was instance of applicant/accused Waqar that he committed murder of deceased Habib and Zahid on instruction of co-accused/applicant Qasim, therefore, at this stage, when trial has already been started and prosecution witnesses are being examined, release of applicants/accused on bail may hamper the proceedings of double murder case. Sufficient evidence available to show that accused had committed non-bailable offences, reasonable grounds available to connect the applicants/accused with the commission of offences and material on record showing that there were reasonable grounds for believing the applicants/accused as involved in the case, hence bail application of applicants/accused is hereby declined, however, after recording evidence of P.Ws, the applicants/accused may

re-submit their applications for bail on fresh grounds. Order accordingly.

It needs not to iterate that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

J U D G E

Faheem/PA