

IN THE HIGH COURT OF SINDH KARACHI.

Cr. Bail Appl. No.D-197 OF 2020.

Present.

Mr. Justice Salahuddin Panhwar.

Mr. Justice Zulfiqar Ali Sangi.

Applicant: Sheeraz s/o Imam Buksh through Mr. Lal Hussain Shah, Advocate.

Respondent: The State through Mr. Abrar Hussain Khichi, DPG.

Date of hearing: 27.04.2020

Date of order: 04.05.2020

ORDER

ZULFIQAR ALI SANGLI, J. Through instant bail application, applicant Sheeraz s/o Imam Buksh sought his post-arrest bail in Crime No.27/2019 u/s 353/324/302/34 PPC registered at Police Station Pak Colony, Karachi. Earlier, the same was declined by learned Judge Anti-Terrorism Court No.XVII Karachi, vide order dated 10.01.2020.

2. The brief facts of the prosecution case are that the complainant PC Mashooq Ali recorded his 154 Cr.P.C. statement on 12.02.2019, stating therein that he and PC Muhammad Farooq, on a private bike, were busy in patrolling duty as per routine along with SHO in Government mobile. At about 1445 hours vide entry No.27 the SHO went to DIG office for attending the meeting and PC Mashooq Ali/complainant and PC Muhammad Farooq were present at PS. In the meantime spy informer came at PS and asked about SHO; both PCs informed that he (SHO) has gone to DIG office for the meeting then he(spy informer) informed them about the presence of 10/11 suspicious persons in Grass Wali Galee area of Dam Dastagir. Hence on such information, they reached at the pointed place where, on seeing the police party, about

10/11 suspicious person came out from the narrow streets and started firing upon the police party with the intention to kill; it was about 1745 hours. In self-defense PC Muhammad Farooq also made firing with 9mm pistol but due to the firing of culprits PC Muhammad Farooq became injured who (culprits), after firing, escaped away from the spot. In the meantime, SHO came there along with his police party and shifted the injured PC, Muhammad Farooq, to Agha Khan Hospital for treatment where he succumbed to the injuries and died/martyred. The complainant registered an FIR against Habib Shah, Mairaj, Sheeraz, and Shahriryar and six unknown persons that they have made firing and killed PC Muhammad Farooq for the offence u/s 353/324/302/34 PPC.

3. Learned counsel for the applicant contended that applicant is innocent and involved by the police with mala fide intentions; that the role against all the accused mentioned in the FIR is of general in nature; that no crime weapon was recovered from the applicant; that the applicant was implicated along with his two other brothers in the instant case which also suggest malice; that no scratch on the motorcycle or any bullets hit to the other police constable who was also with the deceased on the same motorcycle; that there is no evidence as to how the police know the names of accused who were nominated in the FIR; that the investigation is completed and challan has been submitted by the investigation officer and the applicant is no more required for the investigation; that co-accused Zain has been granted bail by the trial court whereas accused Sahil has been granted bail by this court and the applicant is also entitled for grant of bail on rule of consistency Lastly, he prayed that the applicant may be enlarged on bail. He relied upon the cases of **Nadeem Burney V. The State** (1999 MLD 1259), **Fazil Khaliq alias hafiz V. The State through Advocate-General, N.W.F.P. Peshawar and another** (1996 SCMR 364) and **Muhammad Shakeel V. The State and others** (PLD 2014 S.C 458).

4. On the other hand, learned DPG appearing for the state has argued that applicant is nominated in the FIR with the specific role that he along with other co-accused fired upon police and during the said firing one police constable Muhammad Farooq lost his life; that the act of the applicant is heinous one and is against the society; that at the time of arrest one KK was recovered from the possession of the applicant; that 18 empties of 9MM were recovered from the place of incident and the pistol recovered from co-accused Habib matched with those empties and FSL is positive in that respect; that co-accused who were granted bail were not nominated in the FIR and therefore the rule of consistency does not apply to the case of the present applicant. He further contended that the applicant is also involved in some other criminal cases. Lastly, he prayed that the bail application filed on behalf of the applicant may be dismissed.

5. We have heard the arguments of the learned counsel and perused the material available on record with their able assistance and the relevant law so also cited at the bar.

6. Admittedly the applicant is nominated in the FIR but the source of identity has not been pointed out by the complainant which (*source*) is relevant when named person is previously not known to him. It is settled by now that merely mentioning the name of any person in the FIR without any substance is not sufficient to satisfy ***providing clause***, used in clause(i) of Section 497 Cr.P.C. i.e. *“if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or....”*. The role assigned against all the accused persons, nominated or not named in the FIR, is of general nature that they while armed with pistols have fired upon police party because which (*general role, assigned to all*) one of them PC Muhammad Farooq received the firearm injuries and succumbed, therefore, prosecution would not be justified in getting any benefit against one out of all merely for reason of his

being named in FIR, particularly when naming is not backed by any independent source or claim. The crime weapon has not been recovered from the applicant ; even otherwise mere recovery of weapon *alone* cannot satisfy the lust of phrase '**existence of reasonable grounds**' because legal status thereof is nothing more than of '**corroborative one**' which (corroborative piece) alone can't hold a conviction.

7. The co-accused Zain has been granted bail by the trial court vide order dated: 17-05-2018, whereas this court granted post-arrest bail to the accused Sahil vide order dated: 06-09-2019 in CrI. Bail application No.1006 of 2019, both of them, though, were not nominated in the FIR yet the role assigned against them is one and same without any distinction. It is settled by now that where the case of accused, seeking bail, is on same footing as that of accused, admitted to bail, then mentioning of name *alone* without disclosure of source thereof (*naming*) alone would not be sufficient to take the case of such accused away from pale of **rule of consistency**. In short, the ground of consistency is to be adjudged from the role played by each of accused at the time of the commission of the crime not from that accused is nominated or not in the FIR.

8. As far as the contention of learned DPG that the applicant is involved in other criminal cases, it would suffice that mere involving in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within meaning of **further inquiry**. Needful to add that liberty of a person is a precious right that has been guaranteed in the Constitution of the Islamic Republic of Pakistan, 1973 hence in cases, where there is *slight* tilt towards grant of bail the same needs to be preferred over letting one to confine in jail for an *indefinite* period in name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned DPG has not brought on record any material that applicant has been convicted

in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance is placed upon the cases of **Moundar and others vs. The State** (PLD 1990 S.C. 934) and **Muhammad Rafique Vs. The State** (1997 SCMR 412).

9. It is a well-settled principle of law that the deeper appreciation of the evidence is not permissible at bail stage and the same is to be decided tentatively on the material available on the record, from the tentative assessment of material available on record the applicant has succeeded in bringing his case within the ambit of further inquiry falling under section 497(2) Cr.P.C. entitling him for the relief sought for. As a consequence, the bail application is allowed; the applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.2,00,000/- and the PR bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to mention that the observations made hereinabove are tentative and shall not cause prejudice to the right of either party at trial.

JUDGE

JUDGE