

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

Criminal Bail Application No. 1368 of 2020

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

Heard on : 28.09.2020

For Applicant : Mr. Ahteshamullah Khan, Advocate.

For Complainant : Ghulam Rasool Shaikh, Advocate alongwith complainant.

For State : Ms. Seema Zaidi, D.P.G, Sindh.

Kausar Sultana Hussain, J.:- On dismissal of post-arrest bail Application No.2357 of 2020, by the learned trial Court, vide order dated 15.8.2020, the applicants Amjad Ali and Shahbaz, both sons of Safdar Zaman have approached this Court, by filing instant bail application under Section 497 Cr.P.C to enlarge them on bail in case FIR No.245 of 2020, under Section 302/34 PPC, registered at P.S. Sharafi Goth, Malir Karachi.

2. Briefly stated the relevant facts are that the complainant Shareefullah lodged instant F.I.R at Police Station Sharafi Goth, Karachi, on 16.7.2020 at 09:45 p.m, stating therein that he is Chowkidar in Awami Market Dawood Chowrangi and his younger brother Saeed Ghani was working on Juice Cabin near Dawood Chowrangi. On 15.07.2020 at about 05:00 p.m he reached at Dawood Chowrangi MCB Bank and saw large number of public gathered in front of Mashallah Biryani and when he went there, he saw that his brother Saeed Ghani was caught hold by fruit seller Amjad Ali and his brother Shahbaz, while Najeebullah son of Kaleemullah and Roohullah son of Ghulam Nabi were trying to save his brother. During this struggle co-accused Wajid Ali, the brother of applicants caused Churri blow to his brother Saeed and injured him badly due to which he fell down. On this all three brothers made their escape good from the spot and complainant took his brother to Jinnah

Hospital via Ambulance where he was declared as brought dead, hence this FIR.

3. I have heard the learned counsel for the applicants / accused and learned D.P.G duly assisted by the learned counsel for the complainant and have perused the material available on record.

4. The learned counsel for the applicants / accused has argued that the applicants / accused are innocent and have falsely been involved in this case. Per learned counsel there is a delay of one day in lodging FIR without any plausible explanation; that there are general allegations upon the applicants/accused and no specific role has been assigned to them; that prior to the above false FIR, the father of the applicants/accused namely Safdar Zaman had moved an application to SHO of PS Sharafi Goth for lodging FIR against the complainant and his sons as they injured the sons of Safdar Zaman, but no FIR was lodged, therefore, one Criminal Misc. Application No. 1141 of 2020, under Section 22-A & 22-B Cr.PC in the Court of learned Sessions Judge, Malir was filed by the father of the applicants/accused, whereas the present FIR has been registered by the complainant only to compel the applicants/accused not to lodge the FIR against the complainant party; that nothing has been recovered from their possession or pointation of the applicants/accused; that place of incident is a thickly populated area but the police had failed to associate two private witnesses from the vicinity, as such case is doubtful and requires further inquiry. He prayed for grant of bail. In support of his arguments, he has relied upon the case law reported in 2014 P Cr.LJ 1548 (Muhammad Naveed v. The State), 2007 YLR 2374 Karachi (Suhrab v. The State), 2020 P.Cr.LJ Note 62 (Sindh) (Rashid Chandio and another v. The State) and 2020 MLD 786 (Sindh) (Anwar alias Saeed Khan Bughti v. The State).

5. Conversely, the learned D.P.G with the assistance of learned counsel for the complainant has opposed the plea of the

applicants/accused and emphasized on the point that the FIR was lodged just after completion of funeral ceremony of deceased, therefore, there is no ground for delay; that the applicants/accused are nominated in the FIR with specific role; that on his pointation, the crime weapon Knife was recovered. Lastly, the learned D.P.G, Sindh argued that the applicants/accused party are trying to lodge FIR against the complainant in order to save their skin, therefore she prayed for dismissal of bail application of the applicants / accused. In support of her arguments, she relied upon the case laws reported in 2002 P.Cr. LJ 1277 Karachi (Gul Bahar and another v. The State) and 2003 YLR 1884 Karachi, (Wazir v. Ghulam Mustafa and two others),

6. After hearing arguments of both the side and perusal of record, I am of the view that facts of the FIR under consideration reflect that the complainant himself is a eye witness of the incident and three other independent eye witnesses namely Ubaidullha, Najeeb and Roohullah have fully corroborated the version of the complainant while recording their respective statements under Section 161 Cr.P.C. The learned Defence Counsel's plea regarding one day delay in lodging FIR cannot be considered as normally in such type of sudden and unexpected circumstances, especially when a family member of someone is murdered they are not be able to handle the situation, therefore, it is not a sufficient reason to ignore the other evidence of the case. The facts of the FIR as well as statements of three eye witnesses recorded upon 161 Cr.P.C clearly show the role of both applicants/accused whereby they intentionally facilitated the co-accused by holding the deceased while commission of offence. Record shows the sufficient material against both the applicants/accused, therefore, in my view there is reasonable ground to believe the involvement of both the applicants/accused and no case of further inquiry under Section 497 (2) Cr.P.C is made out.

7. Upshot of above discussion is that on merits both the applicants/accused are not entitled for concession of bail at this initial stage of the case, however, after recording evidence of eye witnesses the applicants/accused can repeat bail application, if they are advised to do so. The instant bail application of the applicants/accused is hereby dismissed having no merits.

8. Case laws cited by the learned counsel for the applicants/accused in my opinion are distinguishable from the facts and circumstances of the present case as such those are not applicant to it.

9. Needless to mention here that observations, if any, made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants/accused on merits.

10. Above are the reasons for short order dated 28.09.2020.

J U D G E

Faheem/PA