ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1998 of 2020

Date | Order with signature of Judge

For hearing of bail applications

Date of hearing : 04th March 2021
Date of order : 04th March 2021

Mr. Tariq Mehmood Siddiqui, advocate for applicant/accused.
Mr. Abdul Ghaffar Kalwar, advocate for complainant.
Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh.

Salahuddin Panhwar, J.-Through instant bail application, applicant/accused seeks post arrest bail in Crime No.262 of 2020, registered at P.S. Mangopir, Karachi, for offences under Sections 302/109/34 PPC.

2. Precisely, the relevant facts as narrated in the FIR are that complainant Aseeb Khan lodged FIR that he was transporter. On 11.05.2020 at 1200 hours, (day time), his brother Chand Khan went outside the house and did not return. On 12.05.2020 at 5:00 p.m. SHO Muhammad Gul Awan, PS Manghopir came at the house of complainant and showed him photographs of a person murdered in Manghopir area on 11.05.2020 at 2220 hours. Complainant identified the same to be his brother Chand Khan and went to PS, received dead body of his brother and after its burial, went to police station where such FIR was lodged against applicant and others.

3. During investigation, empties and blood stained earth were secured, 161 Cr.P.C. statements of P.Ws were recorded. Police arrested applicant/accused and other two co-accused in the present crime. Bail application was moved on behalf of applicant/accused, but the same was dismissed by learned trial Court vide order dated 20.07.2020, hence, the applicant approached this Court for the same relief.

4. Learned counsel for the applicant/accused contended that applicant/accused took specific plea of alibi before learned trial Court but trial Court has not appreciated the same and out rightly rejected it without any cogent reason; that nothing incriminating has been recovered from the possession of the applicant; that admittedly there was previous enmity between the parties hence false implication of the applicant/accused in the present crime cannot be ruled out; that no specific role has been ascribed to the applicant and case of the applicant falls within the purview of further inquiry as enumerated under Section 497(2), Cr.P.C; that prosecution case against applicant/accused is doubtful. In support of his contentions he relied upon the cases reported as 2021 SCMR 87 and 2018 YLR 1462.

5. Learned Additional Prosecutor General Sindh, assisted by learned counsel for the complainant, vehemently opposed for the grant of bail to the applicant/accused and contended that applicant and others accused persons committed *qatl-e-amd* of brother of the complainant; that prosecution witnesses have supported in the prosecution case in their statement recorded under Section 161 Cr.P.C; that three empties were secured from the place of occurrence by the I.O., which shows that more than one fires were made at time of incident. In support of the contentions reliance has been placed upon the case reported as 2017 YLR Note 3172010 P.Cr. L.J 1868 and 2012 P.Cr.LJ 1591.

6. Heard and perused the record.

7. At the very outset learned counsel for the applicant raised plea of alibi by stating that at the time of incident, the applicant/accused was in the Rehabilitation Centre for his treatment. It is established principle of law that the veracity of plea of alibi would be determined and scrutinized during trial and not at bail stage. Reliance in this respect is made to the case of **Muhammad Afzal v. The State (2012 SCMR 707)**. Then learned counsel for the applicant attempted to argue that even no recovery has been effected from the applicant/accused, it is observed that recovery is always a corroborative piece of evidence and as to what is the effect of recovery or non-recovery can be gone into only once evidence is recorded. Mere non-recovery at the bail stage cannot be a ground for granting bail. The

contention of the learned counsel for the applicant that no specific role has been ascribed to the applicant and case of the applicant falls within the purview of further inquiry as enumerated under Section 497(2), Cr.P.C, is concerned, it has no force. Mere possibility of further enquiry exists almost in every criminal case but it is no ground for treating matter as one under subsection (2) of section 497, Cr.P.C. The practice of making out a case of further enquiry by the court in a vague manner to make out a case for grant of bail was deprecated by the Honuorable Supreme Court in its judgment reported in **2006 SCMR 1265**. A case would only fall within the scope of further enquiry under section 497(2), Cr.P.C. if the court reaches to a conclusion that on the material available before it, there are no reasonable grounds to believe that the accused is guilty of a non-bailable offence or an offence punishable with death, imprisonment for life or imprisonment for 10 years and in the absence of such finding there will be no occasion for the court to hold that the case is one of the further enquiry. With regard to enmity between the parties, it is observed that existence of enmity is always a double edged weapon and it cuts both ways and previous enmity does not help either side in most of the cases, at least, at the bail stage, where the accused is required to make out a case for further inquiry into his guilt. However, in the present case, the applicant/accused is specifically nominated in the FIR, the prosecution witnesses have fully implicated the applicant in their statements recorded under Section 161 Cr.P.C. During investigation, the applicant/accused has also admitted commission of the offence on his instigation. At bail stage only tentative assessment is to be undertaken on the basis of material available on record and no deeper appreciation is required to be made.

8. Prima facie, after meticulous assessment of the available record, there are reasonable grounds to believe that applicant/accused is involved in the commission of alleged offence, which is punishable for death or imprisonment for life. The citations referred to by learned counsel for the applicant/accused are on different footings, even otherwise, the precedents in bail matters are of no help to a party, as it varies from case to case depending upon the facts of each case.

9. For the above stated reasons, I have come to the conclusion that applicant/accused has failed to make out a case for grant of bail at this stage. I, therefore, find no merits in the bail application and it is dismissed.

10. Needless to observe that the above observations are tentative in nature and the trial Court shall not be influenced, in any manner, while deciding the case on merits.

11. These are the reasons for the short order announced on 04th March 2021.

J U D G E

Sajid