

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1035 of 2021

Asghar,
applicant through: Shah Imroz Khan, advocate

The State,
Through: Mr. Fahim Hussain Panhwar, DPG

Sarfaraz
Complainant through: Mr. Dindar Ali, advocate

Date of hearing: 28.12.2021

Date of order: 07.1.2022

ORDER

Adnan-ul-Karim Memon, J. – Through this bail application, applicant Asghar son of Bakht Khan, seeks bail after arrest in F.I.R No.199/2020, registered under Sections 393/302/34 PPC at PS Peerabad, Karachi.

2. Facts of the case as per FIR are that on 08.6.2020 at midnight complainant was informed by Abid son of Faqeer Muhammad that his uncle, Sabir Khan sustained a bullet injury, and was taken to Askari Hospital, Qasba Colony. On receiving the said information, the complainant reached Askari Hospital, where he was informed that his brother Sabir Khan was taken to Abbasi Shaheed Hospital. On reaching Abbasi Shaheed Hospital, the complainant saw his brother's dead body lying in Chippa Ambulance; and, after completing legal requirements at Abbasi Shaheed Hospital by PS Peerabad, the dead body of the deceased was handed over to him. That after burial on 09.6.2020, complainant watched CCTV camera recording installed at Baba Khel Mini Mart; and came to know that on 08.6.2020 at about 2345 hours, two young boys entered in the shop with the weapon to commit robbery from complainant's brother Sabir Khan son of Abdul Rehman aged about 48 years and during resistance by the deceased, accused fired upon complainant's brother, who died during treatment. Such a report was lodged with Police Station Peerabad, Karachi on 1.7.2020.

3. I have heard Shah Imroz Khan, learned counsel for the applicant. It is contended on behalf of the applicant that the applicant has no concern with the alleged offense; that the trial Court has examined PW-1 / complainant and there are so many contradictions in his statement and cross-examination; that in the statement under Section 154 Cr.P.C. and statement under Section 161 Cr.P.C., no name of the applicant has been given by the complainant, he also contradicted the memo of pointation, and no private person was associated from the place of occurrence at the time of pointation, therefore, it needs further inquiry; that nothing has been

recovered from the possession of the applicant during the investigation and also the name of the applicant is not mentioned in the FIR. It is further contended that the case registered against the unknown persons, which create serious doubt in the prosecution story; that no identification parade has been held before learned Judicial Magistrate as well no eyewitness and private witness has been cited from the place of occurrence; that the applicant was involved in the present case on the confessional statement before the police, which has no value under Articles 38 and 39 of the Evidence Act. It is further contended that no weapon was recovered from the applicant; that there is a delay of one month in lodging the F.I.R of the incident, which allegedly took place on 03.6.2020 and reported on 01.7.2020, therefore, the applicant is entitled to the concession of bail.

4. On the other hand, learned DPG assisted by Mr. Dindar Ali learned counsel for the complainant, have opposed the grant of bail on the ground that the applicant during interrogation has confessed his guilt; that CCTV camera recording of the said occurrence is also available which connects the applicant; that the complainant fully supported the prosecution version and implicated the applicant in his deposition before the trial court. He further contended that sufficient material is available on record to connect him with the alleged offense; that in such-like cases, the law permits the grant of bail only on satisfaction of the conditions laid down in subsection (2) of Section 497 of the Cr. P.C: Thus, nothing exists on record which could hold that the case of the applicant was one of further inquiry; that the principle of vicarious liability was attracted in the present case; that the medical evidence is consistent with ocular account and sufficient material is available on record to connect the applicant with the offense. They lastly prayed for the dismissal of the instant bail application.

5. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record with their assistance.

6. Tentative assessment of the record reflects the following position of the case:-

- i) *That the alleged offense occurred on 03.6.2020 and was reported on 01.7.2020;*
- ii) *That the alleged incident is unseen and FIR was registered against the unknown person;*
- iii) *That the applicant filed Bail Application No.1373/2020 before this Court which was dismissed as not pressed vide order dated 11.11.2020 whereby direction was given to the learned trial Court to at least record the evidence of the complainant Sarfaraz within thirty days, where after the applicant would be at liberty to file fresh bail application on fresh grounds before the trial Court.*

- iv) *That the applicant filed a Bail Application before the learned II-Additional Sessions Judge Karachi East, which was dismissed vide order dated 23.4.2021 on the premise that no fresh ground agitated in the present application;*
- v) *That during the investigation, the applicant and co-accused were arrested and confessed their guilt before police;*
- vi) *That in the instant crime 30 bore pistol and magazine were recovered from the applicant;*
- vii) *That as per prosecution version, CCTV camera recording of the occurrence installed at the place of incident prima facie supports the prosecution version and connects the applicant and his accomplices with the alleged crime;*
- viii) *That, in the deposition before the trial court, the complainant has identified and nominated the applicant in the subject crime.*
- ix) *That complainant Hafiz Muhammad Sarfaraz has deposed that he identified one of the accused, committing dacoity, while entered Baba Khel Mini Mart and fired upon the shopkeeper / deceased, due to which he died and thereafter they were escaped from the spot on their motorcycle;*
- x) *That the applicant has disclosed during the investigation that all planning of the said crime was done by him;*
- xi) *That complainant deposed that co-accused Arsalan made a first straight fire on his deceased brother.*

7. In view of the above tentative assessment of the record, the direction issued by this Court vide order dated 11.11.2020, though has been complied with and statement of the complainant has been recorded, which *prima-facie*, connected the applicant with the subject crime; therefore, he is not entitled to post-arrest bail at this stage, however, it is for the learned trial Court to determine pro and contra by recording remaining evidence of the witnesses; and, conclude the trial within two (2) months from the date of this order.

8. This bail application merits no consideration and is accordingly dismissed.

9. The observation recorded hereinabove shall not prejudice the case of either party at the trial stage.

JUDGE