

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1836 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

18.01.2022

Mr. Nadir Khan Burdi, Advocate for the Applicant
Mr. Shoukat Hayat, Advocate for the Complainant
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh
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ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Ameer Bux seeks his release on post-arrest bail in Crime No.47/2020 registered with Police Station Bannu, under Sections 302, 337-H(ii), 504 read with Section 34 PPC. The case after thorough investigation has been challaned by the police which is now pending for trial before the Court of Additional Sessions Judge-I/Model Criminal Trial Court, Thatta vide Sessions Case No.50/2021 [re-The State vs. Sher Muhammad Magsi and others]. The applicant preferred his bail plea before the learned trial court which by means of order dated 26.08.2021 was declined; hence instant application has been maintained.

2. The crux of prosecution case as unfolded by the complainant are that on 04.11.2020 at about 1100 hours, the applicant/accused Ameer Bux, co-accused Sher Muhammad, Manzoor and Muhammad Bux duly armed with pistols and repeaters in furtherance of their common intention had committed murder of deceased Dittal Khan. To such effect, present FIR was lodged on 05.11.2020. After completion of legal formalities, the challan was submitted on 23.11.2021.

3. Learned counsel for the applicant submits that applicant has been falsely implicated on the ground of enmity as prior to this incident, brother of applicant namely Mian Bux and one Nawaz Ali were murdered by Ahsan (brother of present complainant) and Aaroo. Such FIR bearing Crime No.02/2014 was registered with PS Bannu under Sections 302, 324, 506/2, 147, 148, 149 PPC. The said case was tried by the Court of Additional Sessions Judge-I/MCTC, Thatta vide Sessions Case No.47/2014 [re-The State vs. Aaroo and others] and after conclusion of the trial, accused namely Aaroo and Ahsan were acquitted of the charges by way of judgment dated 06.07.2019. Copy of the said judgment has been placed by counsel for the applicant through his Statement dated 23.12.2021. He next submits that during investigation applicant was found innocent, therefore, was released under section 169 Cr.P.C. and such report in terms of Section 173 Cr.P.C. was also filed by police before the Judicial Magistrate, Mirpur Sakro, who did not concur his opinion with police report and by taking cognizance of the offence has sent up the case through his order dated 24.11.2020.

Learned counsel further submits that accused Muhammad Bux against whom motive has been shown, has been bailed out by the trial court. He next submits that accused Sher Muhammad against whom the role of making fire in the air was assigned, had made confession before the Judicial Magistrate and the pistol was also recovered from him. He next submits that applicant being Government servant is working as Primary School Teacher was not available at the scene of offence and was in the Bank aims to draw his salary, therefore, he was rightly let off by the police and the cognizance took by the Magistrate was not justified. He further submits that plea of alibi can be considered at bail stage, therefore, the case against applicant requires further inquiry. In support of his contentions, he places reliance upon the cases of *Mehboob-ur-Rehman and 2 others through Special Attorney vs. The State and another* (2021 YLR 1560), *Rasool Bux and others vs. The State and another* (2017 YLR Note 131), *Mubashir alias GOGA vs. The State* (1996 PCr.LJ 1594), *Haroon Babar vs. The State and another* (2017 YLR Note 405), *Ghulam Ghous vs. The State* (2013 YLR 1698), *Zaigham Ashraf vs. The State and others* (2016 SCMR 18), *Mushtaq Ahma vs. The State and another* (2012 YLR 1101) and *Asif Nawaz Khokhar vs. The State and another* (2011 YLR 2897).

4. On the other hand, learned Deputy P.G, Sindh, appearing for the State, opposes the bail application on the ground that PWs, who are nominated in the FIR, had specifically implicated the accused and supported the case of prosecution; besides, the accused being nominated in the FIR, has been assigned specific role of causing fire shot injury to the deceased, therefore, he is not entitled for bail. She further submits that plea of alibi taken by accused cannot be considered at this juncture and it is to be considered by the trial Court after recording evidence of the prosecution witnesses. She further submits that charge against accused has been framed, therefore, it will be appropriate for him to proceed with the trial instead of pressing this bail application.

5. Learned counsel for the complainant, while adopting arguments advanced by learned Deputy P.G, Sindh, opposes the bail application and submits that tentative assessment is to be considered at bail stage and deeper appreciation is not permissible. He further submits that order dated 24.11.2020 passed by the Magistrate whereby he took cognizance of the offence was not challenged by accused or any of co-accused and it attained finality. As far as plea of alibi is concerned, learned counsel for the complainant submits that it too is not required to be considered at bail stage and it is prerogative of the trial Court to determine it after recording evidence of prosecution witnesses. In support of his contention, learned counsel for the complainant has also placed reliance upon the cases of *Muhammad Afzal vs. The State* (2012 SCMR 707), *Zaheer Ahmed vs. The State* (2015 MLD 992), *Muhammad Yahya vs. The State* (2016 PCr.LJ Note 66), *Muhammad Mansha vs. The State* (PLD 1996 SC 229), *Ghulam Ahmed Chisti vs. The State and another* (2013 SCMR 385), *Abdul Latif vs. The State and another* (2015 PCr.LJ 1083) and *Muhammad Aslam vs. The State and another* (2015 MLD 242).

6. **Heard arguments and perused record.** Admittedly, the FIR was lodged promptly and the applicant/accused is nominated in the FIR with specific role of causing firearm injury to the deceased. The offence with which applicant stands

charged, carries capital punishment. As far as ground taken by the counsel for the applicant with regard to enmity is concerned, it is settled principle of law that the enmity is double edged weapon which cuts roots of either side. The plea of alibi as has been urged requires deeper appreciation which cannot be determined at this juncture unless the evidence of prosecution witnesses is recorded. No doubt the accused was released by the police, yet it is also not binding upon the Court to concur its opinion with police report, more particularly when a person has been charged on the allegation of causing murder of other innocent and offence with which he has been booked, is involved with capital punishment. Per progress report furnished by the trial Court, charge against accused has been framed and the complainant as well as witnesses are appearing, therefore, it will be appropriate for the applicant to proceed with the trial instead to press this bail application.

7. It is settled law that bail in non-bailable offence has always been considered by the Courts where case for bail is made out. While considering the bail matter of an accused person involved in a non-bailable offence, if there appear reasonable grounds for believing that he is guilty of an offence punishable with death or imprisonment for life, he shall not be released on bail, until and unless the case is covered by any of the provisions in subsection (1) of Section 497, Cr.P.C. In case, the bail is to be granted to every accused, even if he is charged with a non-bailable offence, without considering the merits of the case, merely on the plea that every accused is presumed to be innocent unless proved otherwise, the very concept and purpose of drawing a line between bailable and non-bailable offences and various kinds of punishments, as prescribed by the law, shall stand frustrated. The discretion vested with the Courts is to be exercised in a judicial fashion and in the light of the facts of each case. Where the prosecution collects enough material to constitute reasonable grounds connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail.

8. In view of the above, I am of the opinion that no case of interference is made out and the circumstances as above are sufficient to believe that applicant has prima facie been connected with commission of the offence and therefore, he is not entitled for grant of bail. Consequently, instant bail application is hereby dismissed. However, the trial Court is directed to expedite the trial and conclude it within shortest possible time, under intimation to this Court.

9. It is pertinent to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

10. The Criminal Bail Application is disposed of in the terms indicated above.

JUDGE