

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD.**

Criminal Bail Application No.S-564 and 565 of 2021.

Applicant : Muhammad Aslam and Abdul Ghaffar
through Mr. Muhammad Yousaf
Leghari, advocate.

Respondent : The State
Through Ms. Sana Memon, Assistant
Prosecutor General, Sindh.

Date of hearing : 09.08.2021.

Date of decision : 09.08.2021.

ORDER

KHADIM HUSSAIN TUNIO, J- Through captioned criminal bail application, the applicants seek their admission to post-arrest bail in Crime No. 51 of 2021, under section 302, 201 and 34 PPC, registered as P.S Badin, for which their bail plea prior had been declined by the 1st Additional Sessions Judge Badin.

2. Brief facts as pertained in the FIR bearing Crime No. 51 of 2021 are that on 24.02.2021, complainant's father and other relatives were sitting at the otaq at 8:00 p.m. when one Shehenshah alias Abdul Malik arrived there and left with the complainant's father on their CD-70 motorcycle. The complainant's father did not return and ultimately, on 26.02.2021, his relatives discovered the dead body of complainant's father Asghar Ali near their old otaq and found marks of torture on his neck and face. After funeral proceedings, the complainant appeared at the police station and lodged the FIR while alleging that he suspected that Shehenshah alias

Abdul Malik in collusion with two unknown accused had murdered their father.

3. Learned counsel for the applicants has argued that there are no reasonable grounds to believe that the applicants have committed the alleged offence; that the prosecution story is false and fabricated, based on assumptions; that the name of the applicants is not available in the FIR; that the names of the applicants have been falsely dragged into the instant case; that per S. 38 of the Qanoon-e-Shahadat Order, 1984, the applicants could not be made accused on the basis of statement of co-accused; that the offence is unwitnessed and shrouded in mystery; that no recovery of any incriminating materials has been effected from the immediate possession of the applicants; that no specific allegations have been levelled against the applicants; that the FIR is delayed by about 3 days for which no plausible explanation is provided. He has relied on the case law reported as *2018 YLR (Note) 149, PLD 2012 SC 222, 2016 SCMR 1217, 2021 YLR (Note) 4, 2020 P.Cr.L.J 1734, 1995 P.Cr.L.J 313 and 2012 SCMR 1273.*

4. Learned APG on the other hand has vehemently opposed the grant of bail to the applicants.

5. Having heard and perused the record. From the perusal of record, it transpires that there is a delay of a total of 3 days in the lodging of FIR from the date of initial incident and no plausible explanation was provided for the same. It is well settled law that, the delay in reporting

the matter to police is being usually caused due to factors i.e. deliberation, negotiation, discussion, therefore, it is falling within the ambit of deliberation and afterthought, as such it is always considered to be fatal for the prosecution case making the case of accused one of further enquiry. Even otherwise, when perusing the contents of the FIR, nowhere have the names of the applicants been mentioned, nor has a specific role been assigned to either of them. There was no eye-witness to the said incident and no description of the assailants was given in the FIR either. Nothing on the record shows that any weapon allegedly used, *i.e.* rope, in the crime has been recovered from the applicants either. Even otherwise, the complainant and PWs themselves seem quite confused on whether the deceased was strangled with a rope, which would justify the recovery of the same, or if he was throttled. The rope recovered was sent for analysis to check whether any DNA could be found on the same and the report in return came back negative. In his further statement, the complainant stated that his father was murdered by co-accused Shehanshah alias Abdul Malik Turk and Liaquat Ali Turk, and once again he did not name the present applicants even when presented with the opportunity. The incident throughout remained unwitnessed and nowhere has anything been brought on record to remotely connect the applicants with the commission of the alleged offence. Only the word of co-accused is available on the record who has confessed before the police regarding the involvement of the applicants; however word of mouth cannot be

sufficient to curtail the liberty of a person. So far the application of section 201 PPC is concerned; suffice it to say that the said section provides seven years punishment and does not fall within the prohibitory clause of section 497, Cr.P.C, as such, the case of the applicants' calls for further inquiry particularly at this stage. Bail cannot be declined and the applicants cannot be kept into custody for an indefinite period as premeditated punishment. The investigation of the case is complete and they are no more required for further investigation.

6. For what has been discussed above, I am of the humble opinion that applicants have made out a case for grant of post arrest bail. Accordingly, the applicants were admitted to bail, subject to their furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Lacs) each and PR bonds in the like amount to the satisfaction of the learned trial Court.

7. Before parting with the judgment, I would like to point out that the observations made in the bail granting being based on tentative assessment of the material for the purpose of disposal of bail application only, will not influence the mind of the learned Trial Court, which shall decide the case on merits by appraising the evidence strictly according to its merits on the available evidence.

J U D G E