IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S- 277 of 2021
Criminal Bail Application No.S- 340 of 2021
Criminal Bail Application No.S-341 of 2021

Applicants:	Jai Kumar, Kamlesh and Magha Ram through M/s Muhammad Jameel Ahmed, Muhammad Imran Arain and Gada Hussain Dahani, advocates.
Respondent:	The State through Mr. Fayaz Hussain Sabki, A.P.G.
Complainant:	Mangho through Mr. Rameez Rajib, advocate.
Date of hearing:	30.08.2021
Date of decision:	06.09.2021

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O R D E R

KHADIM HUSSAIN TUNIO-J:- By this common order, I intend to dispose of the captioned bail applications as same are outcome of one and same F.I.R bearing No. 110/2020 registered at P.S Umerkot City for offences punishable under sections 302, 376 and 34 PPC.

2. Brief facts of the prosecution case as unfolded in the F.I.R. are that Sht. Janta who was daughter of complainant Mangho was engaged with applicant Jai Kumar, but due to the alleged questionable character of Jai Kumar, complainant dissolved his daughter's engagement which infuriated Jai Kumar and he issued threats of dire consequences to the complainant party. On 21-05-2020, when said Janta was home alone, the applicants entered the house and committed her murder by hanging her in the kitchen with a rope and were seen doing so by witnesses Rahul and Kishore who informed the police and then the complainant, for which F.I.R. was lodged. Subsequently, fragments of male semen were found on the clothing of the deceased hence section 376 P.P.C. was added in the case.

3. Learned counsel for the applicants/accused argued that there is no reasonable ground to believe that the applicants have committed the alleged offence with which they stand charged; that the prosecution story is false, fabricated, untrustworthy and is without any independent or corroborative piece of evidence; that the DNA report with regard to the semen found on the clothing of the deceased was in negative as far as applicants are concerned; that the case was investigated by three investigating officers and the present applicants were all declared innocent; that that the case of applicant falls within the ambit of further inquiry. In support of their arguments, the learned counsel has cited the case law reported as ***2016 SCMR 18, 2021 SCMR 1138, 2020 SCMR 1049, 2012 SCMR 1137, 2020 PCrLJ 87, 2018 MLD 1007, 2018 PCrLJ 132*** and ***2016 SCMR 2136.***

4. On the other hand learned counsel for complainant argued that the medical evidence has fully supported the ocular account furnished by two eye-witnesses who are the brothers of the deceased; that the delay in the lodging of FIR has been explained as the police had refused to lodge the FIR initially and the complainant had to file an application u/s 22 A & B before the Justice of Peace; that the police conducted investigation under political influence and hence declared the applicants innocent and also refused to lodge the FIR; that the offence with which the applicants are charged carries capital punishment and falls under the prohibitory clause of S. 497 Cr.P.C. In support of his arguments, he has relied on the case law reported as ***2016 SCMR 2064, 2015 SCMR 665*** and ***2012 MLD 647***.

5. Learned Asst. P.G for State argued in the same line as argued by the counsel for complainant while adding that the offence with which the applicants are charged carries capital punishment and is a heinous offence and sufficient material is available on the record to connect them with it.

6. I have heard the learned counsel for the respective parties and perused the record available before me.

7. Perusal of record shows that on the incidental day, when the complainant had left for work and his wife had gone to get groceries, his daughter was alone at home when she was alleged hung in their house's

kitchen by the present applicants who used a rope. The alleged incident was witnessed by PW Rahul who then informed PW Kishore. Preliminary inquiry of this case was conducted in terms of S. 174 Cr.P.C read with Rule 25.31 of the Police Rules, 1934 which mandates the Officer in-charge of a police station or any other officer, on receiving information regarding the unnatural or sudden death of a person, shall immediately proceed, after sending information to the nearest Magistrate, to the place where such body was found and shall act as prescribed under Rule 25.33 of the Police Rules 1934 and S. 174 Cr.P.C so as to prevent destruction of evidence, draw up a report regarding the apparent cause of death, wounds, marks or any bruises found on the body or any weapons recovered that were possibly used in the commission of offence. Such exercise having been occurred in the present case makes the doubt arising from the delay in the lodgment of F.I.R inconsequential. Even otherwise, as held in the landmark case of ***Gullo Khan v. Gul Daraz Khan and others*** **(1995 SCMR 1765)** undoubtedly, benefit arising from the delay in the lodgment of F.I.R goes to the applicant/accused and the same could be taken into consideration *along with other circumstances*, however for granting the extra-ordinary relief of bail, such delay alone is never considered as a circumstance sufficient for the grant of bail in a case involving capital punishment. As far as the argument regarding the DNA report is concerned, its conclusion was that the applicants were not the contributors of the semen found on the clothing of the deceased. Blood samples were received on 03.12.2020, whereas the DNA samples for the test of semen found on clothes of deceased that came in negative were received on 21.11.2020, i.e. almost 6 months after the date of occurrence being 21.05.2020. This means that whatever samples were received by the ***Forensic and Molecular Biology Laboratory***, they were 6 months old. The Court has not been able to ascertain as to how these samples were preserved for the prolonged period especially when external factors (such as temperature and humidity) and internal factors (other bodily fluids) affect the validity of the sample. After indulging in some studies, this Court was made aware that the earlier the samples are collected and tested, the more accurate results it yields. Per numerous studies, DNA testing can only reliably lead to an offender if the sample is tested within the span of the first 7 days of the

offence occurring. Conclusively, the DNA report coming in negative is barely of any help to the case of applicant for grant of his bail, especially when the offence with which he is charged falls within the prohibitory clause of S. 497 Cr.P.C and is punishable up to death or life imprisonment. Even otherwise, the effect of the DNA report will be considered during the trial after evaluating the evidence produced by the parties. This does not absolve the fact that the applicants still stand charged with an offence that is punishable by the capital punishment.

8. During re-investigation of the case, the I.O found the applicants innocent in the case, but after an application for reinvestigation which was subsequently allowed, the case was reinvestigated again. Besides, it is well settled law that the opinion of the police is not binding upon the Court as the Court shall give its opinion after going through the record; however, the record of the case itself confirms the authenticity of the incident in the shape of 161 Cr.P.C statements of PWs Rahul and Kishore, ocular account and medical evidence, which are obviously in nexus with each other against applicants/accused, against whom the allegation is that they caused death of deceased by strangling her with a rope and such fact has also been admitted in the post-mortem report where marks of said rope have been found around the neck of deceased Janta.

9. As far as the defence plea of the applicants is concerned that they were declared innocent by the police, the establishment of the same would require in-depth appreciate of evidence which is unappreciated at bail stage and shunned upon and the opinion of the police officer is not binding upon the Court. In this respect reliance may respectfully be pleased on the case reported as ***Qudrat Bibi v. Muhammad Iqbal*** (**2003 SCMR 68**) and ***Mudassar Altaf and another v. The State*** **(2010 SCMR 1861)**. It is also a settled principle of law that the court has to make tentative assessment while deciding the bail application and before recording the evidence in the trial court and deep appreciation of evidence is not permissible at bail stage, which may cause prejudice to the case of either party at the trial. In this respect, reliance is placed on the case law reported as ***Bilal Khan v. The State through P.G, Punjab and another (2020 SCMR 937)***. The complainant party

disclosed clear motive in the FIR as well that specifically names the applicants and this fact holds substance while deciding this bail as well.

10. As far as the argument with regard to there being no specific roles assigned to the applicants is concerned, it is a settled principle of law that it is not always necessary to do in cases where assailants attacked upon an unarmed soul and took away the deceased's right to life. Moreover, the same is also a question that is left for the trial Court to evaluate. In this regard, reliance is placed on the case law reported as ***"Shahzaman and two others v. The State"*** **(PLD 1994 SC 65)**. So far the pre-arrest bail is concerned, no malafide has been alleged against the police or the complainant either so as to extend the extraordinary relief. Ultimately, 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. Bail in cases of commission of non-bailable offences and particularly falling within the Prohibitory Clause of Section 497 Cr.P.C is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry, without keeping in view the entire provisions of Section 497, Cr.P.C. If bail were to be granted to every accused even if they stood 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 in the Court 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 ground connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail. The Hon'ble Apex Court, while dealing with a similar case refused to grant bail to the petitioner in the case titled ***"Rehmanullah alias Insaf v. The State and others"*** **(2020 SCMR 357)**.

11 Regarding the case-law relied upon by the counsel, it is worthwhile to add here that such precedents are on different facts and circumstances and such ratio *decidendi* is not applicable in the instant case. In view of the above observations and following the ratio laid down in the above referred case-law, learned counsel for the applicants has failed to make out the case for grant of bail to the applicants and therefore the instant bail applications are dismissed.

12. Needless to mention here that the observations made in this bail order are tentative in nature and shall not in any way affect the merits of either party at the trial and / or influence the trial Court at the time deciding the case finally.

J U D G E

Ali Haider