

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-367 of 2021

Applicant : Shabir @ Ghulam Shabir S/o Muhammad  
Moosa through Ms. Nasira Shaikh,  
advocate.

Complainant : Through Mr. Ghulamullah Chang,  
advocate.

The State : Through Mr. Shewak Rathore, Deputy  
Prosecutor General, Sindh.

Date of hearing : 16.08.2021.  
Date of order : 16.08.2021.

## ORDER

**Khadim Hussain Tunio, J.**-Through instant Criminal Bail application, the applicant / accused Shabir alias Ghulam Shabir seeks his admission to post-arrest bail in Crime No. 89 of 2017, registered under Sections 302, 337-H(ii), 337-A(i), 337-F(i), 147, 148 and 149 PPC, registered at P.S. Shahpurchakar, District Sanghar.

2. It is alleged that the applicant and co-accused had a dispute with the complainant over a land and the co-accused had been issuing the complainant party threats of dire consequences. On the fateful day, the complainant along with his brother Babur Mirza and relatives went to their land when they were attacked by the applicant and co-accused. During this, the applicant fired from his pistol upon the complainant's brother Babur who received the injury and died on the spot. Thereafter, FIR was registered against the applicant.

3. Learned counsel for the applicant /accused has argued that the applicant is innocent and has falsely been implicated in this case; that the FIR is delayed by about 9 hours without any plausible explanation; that the co-accused have already been enlarged on bail by this Court; that no material is available on the record to substantiate the charges levelled against the

applicant; that this Court had issued directions to learned trial Court to conclude trial within 3 months, but after passing of time, trial has not commenced yet; that the applicant is behind bars since his arrest and is therefore entitled for the grant of bail. She has referred the case law reported as *2008 P.Cr.L.J 1395, 2012 YLR 1412, 2014 P.Cr.L.J 740, 2015 P.Cr.L.J 747, 2017 P.Cr.L.J (Note) 54, 2020 P.Cr.L.J (Note) 90 and 2021 SCMR 130.*

4. Conversely, learned DPG assisted by learned Advocate for complainant vehemently opposed the grant of bail to the applicant, *inter alia*, on the grounds that he is nominated in promptly lodged F.I.R with specific role of the murder of deceased Babur, brother of the complainant, and the medical evidence fully supports the ocular version.

5. I have heard the learned counsel for the respective parties and have gone through the record. A tentative assessment of the record pertains that the applicant has been nominated in the FIR, being armed with a pistol and for causing firearm injury to deceased Babar Mirza which hit him at his chest. The parties are known to each other therefore; the present case does not appear to be one of mistaken identity and alleged incident took place during broad-day light. As far as nine hours delay in the lodging of FIR is concerned, not only has it been explained but it has also been observed by the Hon'ble Apex Court in the case titled *Haji Guloo Khan v. Gul Daraz Khan and others (1995 SCMR 1765)* that no doubt, benefit arising from the delay in lodging the FIR goes to the accused, which could be taken into consideration along with other circumstances, while deciding the bail application, however delay in lodging of FIR alone is never to be considered a circumstance which is sufficient for grant of bail in a case carrying capital punishment. The post-mortem report also supported the ocular account furnished by the complainant and PWs. Moreover, motive has also been furnished by the complainant party by disclosing that dispute existed over the agriculture land with Muhammad Achar and Malook who had time and again extended threats not to come at the land in dispute. The offence with which applicant is charged is heinous one and carries punishment up to death.

6. Earlier, bail applications of the applicant were already dismissed on merits not once but twice by the trial Court vide orders dated 05.07.2019 and

15.04.2020 and also by this Court vide orders dated 01.10.2019 and 22.01.2021. In the third bail application filed before the learned trial Court, all these facts were concealed as duly noted by the trial Court in its order dated 25.03.2021. As far as the non-compliance of the directions issued by this Court vide order dated 22.01.2021 to expedite the trial and conclude the same within three months from today is concerned, non-compliance of directions itself is no ground for grant of bail. In this respect, reliance may respectfully be placed upon the case law reported as *Nisar Ahmed Vs. The State (PLD 2016 SC 11)*. The Division Bench of this Court has also been pleased to observe in Criminal Bail Application No. D- 817 of 2001 Re: *Muhammad Nawaz alias Deno & another Vs. The State* that *"It needs to be clarified that indulgence shown by the superior Courts by issuance of such directions for the trial Court to conclude cases within some specified period are only meant / aimed to expedite proceedings of the cases against the accused and not to arm them with so-called new ground for bail in case of non-compliance of such directions, as vehemently argued by Mr. Muhammad Ayaz Soomro. It will be seen that such a concept is totally alien to any statutory provision. Learned counsel, when asked to refer any provision of law in this context also failed to do so. As observed above in the cases referred by learned counsel also the question of grant of bail to an accused was taken into consideration on the principle of hardship, with reference to the nature of the offence and the period for which accused had remained in custody without conclusion of trial and not merely due to non-compliance of earlier directions.*

7. More so, it is a settled principle of law that bail in cases of commission of non-bailable offences and particularly those falling within the Prohibitory Clause of S. 497 Cr.P.C. and carrying capital punishment is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry as alleged by the counsel for applicant, without keeping in view the entire provisions of Section 497 Cr.P.C. If bail is to be granted to every accused, even if 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 proven 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 a reasonable ground connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail.

8. For what has been discussed above, the applicant has failed to make out a case for grant of bail and therefore the instant bail application was dismissed vide short order dated 16.08.2021. These are the reasons for the same.

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

J U D G E

Irfan Ali