

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Bail Application No.S-579 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objections. 2. For hearing of main case.
<u>20.08.2021</u>	

Messers Ali Murtaza Leghari & Mazhar Ali Leghari, Advocate for the applicants.

Mr. Afzal Karim Virk, Advocate for the complainant.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

==

Date of hearing: 20.08.2021

Date of decision: 20.08.2021

ORDER

KHADIM HUSSAIN TUNIO, J.- Through instant criminal bail application under section 497 Cr.P.C, the applicants seek their release on bail in case emanating from Crime No. 09 of 2021, for offences punishable under sections 302, 109 and 34 P.P.C, registered at P.S. Denghan Bhurghari. The applicants had earlier approached the learned Trial Court with the plea to enlarge them on bail, however the same was declined by the learned Additional Sessions Judge-I/MCTC Mirpurkhas vide his order dated 02.07.2021.

2. It is alleged that the applicants, with their common intention and object, at the instance of Akbar Lajwani, attacked upon deceased Meer Muhammad Mari with lathies and committed his murder, for which F.I.R was lodged.

3. Learned counsel for the applicants has argued that the prosecution story is false and fabricated; that the applicants have been falsely involved in the present case; that there is a 2 day delay in the lodging of FIR for which no plausible explanation has been provided; that the applicants did not cause any injuries to the deceased nor were they present at the place of incident; that the complainant has admitted

enmity between him and co-accused Akbar and the present applicants are Akbar's nephews hence falsely roped in the case; that the 161 Cr.P.C statements of the eye witnesses were recorded after a delay of 2 days; that the allegations levelled against the applicants are general in nature; that co-accused has already been granted bail by the trial Court; that all the PWs are related to the complainant, hence interested and have been set up; and that the applicants are not previous convicts. They lastly prayed for the grant of bail to the applicants. In support of their arguments, learned counsel referred the case law titled MIANDAD versus State (2010 MLD 956), SAEED AHMED versus State (2012 PCrLJ 1293), SOOBAL versus State (2015 YLR 1746, BABAR GUL versus State (2015 PCrLJ 1433) and ZAIGHAM ASHRAF versus State (2016 SCMR 18).

4. Learned counsel for the complainant has opposed the release of the applicants on bail while arguing that the applicants have been specifically named in the FIR; that the delay of two days has been explained and even otherwise cannot be the sole ground for bail; that recoveries have been made from the possession of the applicants that connect them to the offence; that the chemical examiner's report is positive; that deep appreciation of evidence is not acceptable at bail stage. In support of his arguments, he has cited the case law titled MUMTAZ versus State (2012 SCMR 556), AYAZ ALI versus State (2021 MLD 669) and MOHAMMAD NAWAB versus State (2021 PCrLJ 759). Conversely, learned APG argued in the same line as argued by the learned counsel for complainant.

5. I have heard the learned counsel for the respective parties and have gone through the record. A prudent glance at the record shows that both applicants have been nominated in the FIR, shown to be armed with lathies, and have also been assigned roles of causing injuries to the head of the deceased. The source of light during the odd times does not hold much relevance as the parties are known to each other

therefore; the present case cannot be of mistaken identity in the eyes of the Court. As far as the two days 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*, in the present case while deciding the bail application, however delay in lodging of FIR alone is not to be considered a circumstance which is sufficient for grant of bail in a case carrying capital punishment. The "*other circumstances*" in this case seem to be absent. The post-mortem report also backs up the ocular account furnished by the prosecution witness Nabi Bux who is the brother of the deceased. Both the applicants had taken the deceased with them on account of settling business with regard to some buffaloes and never returned. Nabi Bux came back and disclosed to the complainant about the cruel events that had unfolded before him. The number of injuries, the weapon of choice and the gruesome nature of the offence depict the barbaric nature of the applicants from the face of it. Moreover, motive has also been furnished by the complainant party by disclosing that the parties were on inimical terms and co-accused Akbar had threatened the deceased overtime. The offence with which applicants are charged is heinous one and carries punishment up to death. The applicants were arrested and from their possession, recoveries were made of blood-covered lathies which were the crime weapons and blood-stained clothes of the applicants as well. The same were sent to the chemical examiner and the report for the same was received positive. As far as the bail granting order of the trial Court with respect to co-accused Akbar is concerned, his case and the case of the applicants at hand is on different footing as the role assigned to co-accused Akbar was merely of instigation whereas the present applicants have been assigned the roles of causing injuries to the deceased.

6. Furthermore, it is a settled principle of law that bail in cases of commission of non-bailable offences and particularly 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 applicants, 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. Moreover, it is also well settled law that at bail stage, deeper appreciation of evidence cannot be gone into and it is only to be seen as to whether applicant is *prima facie* connected with the commission of offence or not. In the present case, sufficient material has been brought on record to connect the applicants with the commission of offence.

7. For what has been discussed above, the applicants have failed to make out a case for grant of bail and therefore the instant bail application was dismissed vide short order dated 20.08.2021. These are the reasons for the same.

8. 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.

JUDGE