

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

CR. B.A. No. 152 OF 2021

Date	Order with signature of Judge
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BEFORE:
MR. JUSTICE ARSHAD HUSSIAN KHAN

Mustafa ul Haq Vs. The State

Mr. Ali Abbas, Advocate for applicant.
Mr. Talib Ali Memon, A.P.G. a/w
SI Javed Akhtar, PS Surjani Town..

Date of Hg: 06.04.2021

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ARSHAD HUSSAIN KHAN, J: The applicant / accused namely, Mustafa ul Haq son of Sami ul Haq, through instant bail application has sought post-arrest bail in the case bearing F.I.R. No.433/2013, registered under Section 302/34 PPC, at Police Station Surjani Town, Karachi.

2. Brief facts, as narrated in the F.I.R. are that on 20.08.2013 at about 08:32 pm, complainant Muhammad Sarwar lodged FIR stating therein that one *Mohallah* boy came and informed him that his elder brother namely Safeer had received bullet injuries as such he rushed to the site-footpath main road near TCF School, Sector 50-A, LERP, Surjani Town, Karachi and where he found that his brother was lying dead on the ground. Subsequently, he with the help of other family members brought the dead body at his house and informed the Police. Subsequently, police came and thereafter, the dead body was shifted to Abbasi Shaheed Hospital, Karachi, and the legal action was sought against the unknown person(s).

3. Learned counsel for the applicant/accused while reiterating the contents of the bail application has contended that the applicant/accused is innocent and has been falsely implicated in the case by the police with malafide intentions and ulterior motives when the applicant/accused failed to meet their illegal demands. Further contended that the actual facts are that the present applicant/accused was forcibly taken by the police officials of P.S. Surjani Town on 03.10.2020 from his shop situated at Sector 50 Lyari Express Way, Karachi, for which the father in law & mother in law of the present applicant/accused moved an application bearing No.2966 dated 09.10.2020 before the Additional I.G. Sindh Police, Karachi, and also sent

applications to the D.I.G. CIA, Karachi, Chief Justice of Sindh High Court. It is further contended that one of the co-accused namely Muhammad Raheel was also missing for which his mother lodged FIR bearing No. 871/2020 u/s 365-B PPC at P.S. Surjani Town, Karachi, the FIR has been lodged on 14.10.2020 at 0120 hours, while the police officials prepared memo of arrest of the applicant/accused in the above crime dated 14.10.2020 at 2200 hours, which clearly shows that the police officials falsely arrested the applicant/accused and co-accused in the above crime. He also urged that I.O. of the case submitted challan on 28.10.2020 before the concerned Magistrate and the same has been treated as final challan, but I.O. of the case concealed/suppressed the real facts and did not mention registration of FIR No. 871/2020 under section 365-B, PPC at PS Surjani Town, Karachi, for abduction of the co-accused namely Muhammad Raheel and further the I.O. of the case misrepresented in the interim / final challan produced false and fabricated CRO of the present applicant/accused, while there is no any CRO of the present applicant/accused as the alleged CRO has no concern with the present applicant/accused. It is also argued that the co-accused namely Muhammad Raheel has already been granted bail by the learned Xth Additional Sessions Judge, West Karachi, vide order dated 16.01.2021, therefore, the rule of consistency is also applicable and the present applicant/accused is entitled for concession of bail. It is further argued that there is no eye witness of the incident shown by the prosecution or complainant, who saw the present applicant/accused. Further neither the name of the present applicant/accused is mentioned in the FIR nor statement recorded u/s 161 Cr.P.C. nor his specific role has been assigned by the complainant in the FIR. It is urged that the statement of the accused admitting the guilt during police custody is inadmissible under Article 38 and 39 of the Qanoon-e-Shahadat Order, 1984. Further urged that the above said facts, creates doubts and case needs further inquiry and as such the applicant/accused is entitled for concession of bail. Learned counsel, in support of his arguments, has placed reliance on the case of *Shahid Hussain @ Multani v. The State and others* [2011 SMRC 1673], *Aurangzeb alias Peejo v. The State and another* [2017 P.Cr.LJ. Note 131], *Babar Gul v. The State*, [2015 P.Cr.L.J. 1433] (Sindh), *Bashir v. The State and another* [2012 P.L.R. 44], *Asad Ali v. The State and another* [2020 P.Cr.L.J. 776], *Riaz Ali v. The State* [2020 P.L.R. Note 101] and *Ihtisham Raiz v. The State and another* [2020 P.L.R. Note 15].

4. Learned A.P.G. for the state has vehemently opposed the bail application on the ground that the co-accused has disclosed the name of the applicant/accused during course of the investigation, and as such he is not entitled to the concession of bail in the present case.

5. Admittedly, the FIR was lodged in the year 2013 against the unknown persons whereas the applicant/accused has been implicated in the year 2020 that too upon the statement of co-accused recorded under section 161, Cr.P.C. Except the statement of co-accused under section 161, Cr.P.C., there is no evidence collected by the Investigating Agency.

6. The Hon'ble Supreme Court in the case *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of statement of co-accused made before the police in light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements of co-accused recorded by police during investigation are inadmissible in the evidence and cannot be relied upon.

Similar view has been reiterated by the apex Court in case of *Raja Muhammad Younas v. The State* [2013 SCMR 669], wherein it has been held as under:

“2.After hearing the counsel for the parties and going through the record, we have noted that the only material implicating the petitioner is the statement of co-accused Amjad Mahmood, Constable. Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused.....”

7. It would not be out of place to mention here that evidence of an accomplice is ordinarily regarded suspicious, therefore, extent and level of corroboration has to be assessed keeping in view the peculiar facts and surrounding circumstances of the case.

8. The record shows that the applicant/accused is not previous convict nor a hardened criminal. Moreover, the Applicant has been in continuous custody since his arrest and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping the applicant/accused behind the bars for an indefinite period pending determination of his guilt.

9. Therefore, in view the peculiar facts and circumstances of the case, I am of the opinion that prima facie, applicant/accused has succeeded to bring his case within the purview of further inquiry under subsection (2) of section 497, Cr.P.C., and for this reason, he was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial Court, by my short order dated 06.4.2021.

10. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

Above are the reasons of my short order dated 06.04.2021

JUDGE

*Jamil***