

2020 P Cr. L J Note 41
[Sindh]

Before Salahuddin Panhwar, J

NAEEM PERVAIZ alias BABOO and another---Applicants
Versus
The STATE---Respondent

Criminal Bail Application No. 871 of 2018, decided on 28th August, 2018.

(a) Criminal trial---

---Circumstantial evidence---Scope---Circumstantial evidence was though be a weak type of evidence, yet the moment it was proved to be in shape of a 'chain of unbroken links' then effectiveness thereof for holding conviction could not be denied.

(b) Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), Ss. 302, 324, 392 & 34---Qatl-i-amd, attempt to commit qatl-i-amd, robbery, common intention---Bail, refusal of---Statutory delay, plea of---Mother of complainant was found dead and his father seriously injured---Mobile phone and a laptop were missing from the flat---Accused applied for bail after arrest, which was refused by the Trial Court---Record showed that one independent witness, who used to sell vegetables, identified both the applicants while they were coming out from that flat in confused condition---Identification parade was held---Recovery of robbed articles was effected from both the applicants-accused as well locks of the flat were recovered on their pointation---Finger prints of accused were matched, accordingly---Said available material, prima facie, linked the applicants/accused with commission of the offence---Applicants/ accused had, prima facie failed to bring their case out of subsection (1) of S. 497, Cr.P.C.---Plea of applicants/accused for bail on account of statutory delay, required the accused to establish that delay in conclusion of trial was not occasioned because of him or one acting on his behalf---Present was the case of two murders committed during robbery, hence not only fell within prohibitory clause of S. 497, Cr.P.C. but was also heinous in nature---One accused was absconding---Accused was not entitled to concession of bail, which was dismissed accordingly.

Babar Hussain v. State 2016 SCMR 1538 rel.

Zafar Iqbal for Applicants.

Arshad Khan for the Complainant.

Abrar Ali Khichi, DPG for the State.

Date of hearing: 28th August, 2018.

ORDER

SALAHUDDIN PANHWAR, J.---Applicants/accused had earlier filed post-arrest bail application in the above case which were dismissed by the learned trial court vide order dated 01.07.2017 and 15.05.2018 and now applicants/accused have brought this third bail application seeking their release during the trial mainly on ground of delay.

2. Per FIR, on 24.02.2016 at about 230 hours, one Arif informed complainant Adnan Khurram Hayat that his parents who were living in Flat No. 702 of Salala Apartments at Cant. Station are not responding phone and he was informed about it by Ms. Noumi, complainant directed the informer to inform police as Flat was found locked from outside. When police opened that Flat, found Mst. Salina the mother of complainant was lying dead and his father Khursheed Alam was seriously injured. Further the mobile phone and Dell Laptop were missing from the Flat.

3. Heard and perused. Learned counsel for the applicants has mainly argued that instant case is based on circumstantial evidence which is a weak piece of evidence; as well as applicants are entitled to bail on the statutory ground, though he admits that recently complainant has been examined by the trial court.

4. With regard to circumstantial evidence, I would say that the circumstantial evidence, though, normally may be considered as a weak type of evidence yet the moment it is proved to be in shape of a 'chain of unbroken links' then effectiveness thereof for holding conviction cannot be denied. Even otherwise, the prohibitory clause, (subsection (1) of section 497 of the Code) is not subject to existence of 'direct evidence' but deliberately same has been couched as:

"...but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.

'Reasonable grounds; I would say, shall always include circumstantial evidence, therefore, one would not be entitled for release on bail merely on count that only circumstantial evidence is available against him but shall always be required to satisfy lust of subsection (2) of section 497 of the Code which is:-

"...there are not reasonable grounds, for believing that the accused has committed a non-bailable offence; but that there are sufficient grounds for further inquiry into his guilt.."

Having said so, what I found from perusal of the available record is that one independent witness, who used to sell vegetables, identified both the applicants while they were coming out from that Flat in confused condition. Such identification parade was held on 15.03.2016; recovery of robbed articles was effected from both the applicants as well locks of the Flat were recovered on their pointation; finger prints were matched, accordingly. All these available material prima facie link the applicants/ accused with commission of the offence. In short, the applicants/accused have prima facie failed to bring their case out of the subsection (1) to subsection (2) of the section 497 of the Code. Such failure would always result in "shall not be so released".

5. As regard the plea of applicants/accused for bail on count of statutory delay it would suffice to say that to sustain such plea the criterion is entirely different which requires the accused to establish that delay in conclusion of trial was not occasioned because of him or one acting on his behalf which mainly depends with referral to case diaries which the applicants/accused do not specifically refer. Reference can well be made to the case of Babar Hussain v. State (2016 SCMR 1538) wherein it is held that:

4. We are of the considered view that even after lapse of two years, the conduct of an accused seeking adjournments can be taken note of and bail can be denied by a Court even on the statutory ground.'

In the instant matter, it is also not the specific case of the applicants/accused that at all occasions the 'adjournments' were because of prosecution or 'non-attendance of witnesses' but he merely claims his release while referring to his date of arrest. Such has never been the objective of statutory ground. Even otherwise, the complainant of the case has undeniably been examined. Further, this is the case of two murders committed during robbery hence not only falls within prohibitory clause but is also heinous in nature. One accused is yet absconder.

In consequence to what has been discussed above, I do not find the applicants/accused entitled for concession of bail at this stage of case, therefore, instant Criminal Bail Application is dismissed. However, learned trial court shall conclude the trial within three months.

JK/N-16/Sindh Application dismissed