

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No. 258 of 2018.

Date

Order with signature of Judge

For hearing of bail application.

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02.05. 2018

Mr. Shaukat Hayat, Advocate for Applicant.
Mr. Fida Hussain, Advocate for complainant.
Mr. Abrar Ali Khichi, Deputy P.G.

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Through instant bail application, applicant seeks post arrest bail in Crime No. 336/2016 under Section 365 PPC, registered at Police Station Shahrah-e-Faisal, Karachi.

2. Precisely, relevant facts are that on 11.06.2016 at 0010 hours the complainant Imran Ali lodged the FIR at P.S. Shahrah-e-Faisal alleging therein that on 05.06.2016 at 8:00 p.m. his sister Mst. Sania Kanwal went to Airport from house for collecting documents but did not return back and her phone was also switched of. It is further alleged that complainant searched for her but could not succeed, therefore, he had suspicion against person namely Babar for her abduction and subsequently the complainant got registered FIR against the accused to the above effect.

3. At the outset, learned counsel for the applicant has contended that except circumstantial evidence, no iota of evidence is available to connect the applicant in instant case of murder; in fact dead body was already recovered by the police and thereafter applicant is implicated on mere suspicion; recovery of empty shell cannot be relied upon as admittedly

offence reflects that murder was not committed at that place; recovery of weapon from the applicant is with the delay of eight days, hence, cannot be relied upon. He has emphasized over the evidence brought on record and cross-examination with regard to contradiction in respect of time consumption by the police to complete formalities at that time. He has relied upon 2017 SCMR 986, SBLR, 2010 S.C. 275, 1992 SCMR 196, 2014 SCMR 27, 2009 SCMR 1410. 1998 Cr.L.J. 505, 2011 YLR 543 and 2013 P.Cr. L.J. 924.

4. In contra, learned Deputy P.G. assisted by complainant's counsel has argued that FIR was lodged on 11.06.2016 wherein complainant implicated the present applicant and on same day he was arrested; during interrogation he disclosed murder of lady Sania Kanwal as well admitted with regard to availability of dead body on the same day; on his disclosure and on his pointation dead body was recovered and one empty shell was also found there, same was sent for FSL, such report is positive. It is further contended that CDR and vehicle tracking also showing that applicant was available there at that time, hence, this is a sufficient evidence to refuse the bail application as well in the last they argued that evidence of material witnesses has been recorded; contradictions or suggestions cannot be considered while deciding the bail application as the same amounts to deeper appreciation of evidence. Counsel for the complainant relied upon case laws reported as 2017 MLD 1385 [Lahore], 2017 YLR 1076 [Lahore], 2016 SCMR 1401 and 2017 SCMR 325.

5. No doubt, it is a case entirely dependant upon *circumstantial* evidences which can well hold a conviction if all circumstantial evidences

result in making an *unbroken* chain, therefore, *phrase* '**reasonable grounds to believe**', used in Section 497 (1) Cr.PC, would be applicable with complete force even in a case *entirely* dependant upon circumstantial evidences. In short, concession of bail would not be available merely on count that incident is *entirely* based on circumstantial evidence rather the criterion would always be the same i.e existence of **reasonable grounds to believe** accused *guilty* or otherwise.

6. At this juncture, it is pertinent to mention that applicant was working in Intelligence Bureau as operator , such fact is not disputed on the contrary investigation officer, present in court, has submitted proof thereof which is taken on record. Further, investigation reveals that deceased Sania Kanwal was having affair with the applicant but later she changed her mind and became interested in marrying with one Muhammad Fahad; her parents *however* were not willing in both proposals, hence, Sania Kanwal decided to live abroad for a job and applicant arranged fake passport in order to deceive her object. Needless to mention that the admission by the accused with regard to murder and availability of dead body and passports and subsequent discovery / recovery thereof from such *places* make such recovery admissible against the applicant / accused within meaning of Article 40 of Qanoon-e-Shahadat Order 1984 hence *prima facie* establishes link of the applicant / accused with the offence with which he is charged. Admittedly, applicant was arrested on 11.06.2016 on same day during interrogation he disclosed the fact of recovery of dead body which facts is proved by subsequent fact when dead body was recovered by the police on his pointation as well one empty shell was available there; recovery of pistol was sent for FSL to

match with the shell recovered from the place of incident, such report is positive, in addition CDR and vehicle tracking report also, prima facie, confirms the date of recovery of dead body, hence, all available *circumstances* prima facie are sufficient to connect the applicant in the case of capital punishment. As regard the contradiction, as highlighted by the learned counsel for the applicant, it would suffice to say that examination of *contradictions* in evidence is absolute domain of the trial court which *too* at time of evaluation of evidence hence such *exercise* legally cannot be undertaken at bail stage because it would amount to deeper appreciation of evidence which is not permissible at bail stage. Accordingly, bail application is dismissed. Needless to mention that observations made hereinabove are tentative in nature and would not prejudice the case of any party before the trial court on merits.

JUDGE

SAJID..