

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 476 of 2022

Applicant : Sameer Khalid s/o Khalid Hameed Baloch,
through Mr. Liaquat Ali Khan, advocate

Complainant : Muhammad Ali s/o Nawab Ali, through
Mr. Abdul Hafeez Lashari, advocate

Respondent : The State, through Mr. Faheem Hussain
Panhwar, D.P.G

Date of hearing : 27.04.2022
Date of order : 27.04.2022

ORDER

ZAFAR AHMED RAJPUT, J. Applicant/accused Sameer Khalid s/o Khalid Hameed Baloch on being unsuccessful in getting relief of post-arrest bail, vide order dated 23.02.2022, passed by the learned Additional Sessions Judge -XII, Karachi-East in Bail Application No. 594 of 2022, through instant application seeks the same concession from this Court in Crime/F.I.R. No. 24 of 2022, registered at P.S. Shahrah-e-Faisal, Karachi under section 365, P.P.C.

2. Brief facts of the prosecution case are that, on 06.01.2022 at about 04:00 p.m., complainant's son Farooq Ali Khan, aged about 32 years, who used to work of cable-net in the office of Metropolis, Jinnah Avenue, left home for his office in his Suzuki Cults car bearing registration No.AWA-794, but he did not return back; hence, the complainant lodged the F.I.R. under section 365, P.P.C. against the unknown accused persons for kidnaping of his said son. Thereafter, on 09.01.2022, the dead body of Farooq Ali Khan was recovered from a *Nala (sewage watercourse)*, situated near Dubai House, Gulistan-e-Jauhar, with the marks of wounds of *Chhurie* (knife) on his face and neck. On 14.01.2022, the said car of the deceased was found in burnt condition nearby Aziz Bhatti Nazarat, whereafter section 302, P.P.C. was added in the case and, on 18.01.2022, the applicant was arrested in the case. The motive behind the alleged murder of the deceased is

stated to be the commission of rape on the applicant's sister by the deceased and passing indecent comments about her.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in the case by the police, otherwise he has no concern with the alleged offence, as he has no enmity with the deceased; that the applicant has not been nominated in the F.I.R.; that there is unexplained delay of one day in lodging of F.I.R.; that there is no eye witness of the alleged incident; that nothing was recovered from the possession or on the pointation of the applicant and the alleged crime weapon has been foisted upon him; that the applicant has been arrested in the alleged offence on the basis of confessional statement made by him in police custody, which is inadmissible under Article 39 of the Qanun-e-Shahadat Order, 1984 (*"the Order, 1984"*); that the applicant was called by the S.I.O. on 13.01.2022, who later on went missing, whereafter brother of the applicant moved an application regarding his missing at P.S. Shahrah-e-Faisal, through TCS; that after coming to know that applicant was confined at said P.S., his brother filed H.C.P. No. 15/2022 before Sessions Judge, Karachi-East, who appointed Judicial Magistrate-VIII, Karachi-East for conducting raid at concerned P.S.; however, before conducting the raid, the applicant was removed from said police station and then he was implicated in this case as he could not fulfill the demand of illegal gratification; as such, the applicant is entitled to the concession of bail on the ground of further inquiry.

4. On the other hand, learned counsel for the complainant and learned D.P.G. have opposed the instant application on the ground that the F.I.R. was lodged against unknown person and prosecution has no motive to implicate the applicant falsely in the case; that the prosecution has sufficient evidence against the applicant to connect him with the commission of alleged offence; hence, he is not entitled to concession of bail.

5. Heard. Record perused.

6. It appears that on the fateful day, the deceased was lastly seen with the applicant at Naqibia Masjid, situated in Block-12, Gulistan-e-Jauhar, Karachi. It further appears from Call Data Record (CDR) that the deceased was lastly in contact with the applicant. On 14.01.2022, the car of the deceased was found in burnt condition nearby Aziz Bhatti Nazarat. From CCTV Footages/video recorded by the camera installed on the adjacent building shows that one person set the car of the deceased on fire and escaped away, who was subsequently identified to be the applicant, who was arrested on 18.01.2022 and on his pointation crime weapon viz. *Chhurie* was also recovered from sewage. There is no cavil to the proposition that under Article 39 of the Order, 1984 no confession of accused while in custody of police would be proved as against such person, yet Article 40 (*ibid*) is exception to Article 39 which shows as to how much of information received from accused can be proved. Difference as found in Article 40 (*ibid*) is that when any fact is deposed by an accused before the investigating officer and is discovered in consequences of information received from a person accused of any offence in the custody of a police officer, so much of such information whether it amounts to confession or not, as relating distinctly to the fact thereby discovered can be proved against the accused. In the instant case the crime weapon i.e. *Chhurie* has allegedly been recovered on the information and pointation of the applicant. As such, the information supplied by the applicant in police custody is admissible under Article 40 (*ibid*) to the extent of recovery of crime weapon. Applicant's claim with regard to his going missing on 13.01.2022, filing of a petition before Sessions Judge, Karachi-East for his recovery by his brother and his false implication in the instant case are the issues that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law.

7. From the tentative assessment of the evidence in hands of prosecution, I am of the view that prima-facie sufficient evidence is available against the applicant to connect him with the commission of alleged offence, carrying punishment for death or imprisonment for life. Every hypothetical question which could be imagined would not make it a case of further enquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

8. As a result of above discussion, the instant criminal bail application is rejected. The above observations are tentative in nature for the disposal of the bail application and shall not influence the trial Court while deciding the case of the applicant on merits.

9. Above are the reasons of my short order, dated 27.04.2022, whereby instant application was dismissed.

JUDGE

Athar Zai