

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No. 858 of 2021

Date Order with signature(s) of the Judge(s)

1. For orders on office objection at flag "A"
2. For hearing of bail application.

29th June 2021.

Ms. Saadia Naseem, advocate for applicant/accused

Mr. Faheem Hussain Panhwar, DPG alongwith I.O. SI Tariq Khalid, P.S. Sarjani Town

The applicant/accused Malik Mukhtar seeks post-arrest bail in Crime No. 740 of 2020 for offences punishable under sections 302, 395 PPC, registered with Police Surjani Town.

2. Per FIR, on 06.09.2020 at about 5:45 a.m. complainant Nawaz Ali Khan, on the cries of his paternal nephew Mustafa came out of his room which was located adjacent to his shop and saw Al Tameer in injured condition, who was taken to hospital where he succumbed to his injuries. Mustafa and Al-Tameer were watchmen at bus stand. It was informed by P.W Mustafa to complainant that Al-Tameer went for offering prayers whereas, P.W Mustafa went to purchase milk at Bakery, suddenly 8/10 persons on four motorcycles appeared there and robbed his mobile phone, cash and motorcycle and went away. P.W Mustafa informed Al-Tameer on mobile of other person about the incident, who on his motorcycle along with his 30 bore licensed pistol chased the accused persons, the accused on seeing fired at Al-Tameer which hit below his heart and he fell down. Accused also took away the licensed pistol of Al-Tameer. According to FIR such incident was witnessed by Hussain and others.

3. Learned counsel for the applicant has mainly contended that applicant has been falsely implicated in the instant case; that no name, description and or role has been mentioned in the FIR, which was lodged

after three days of incident for which no plausible explanation has been furnished; that P.W Mustafa is not eye witness of the murder; that co-accused disclosed the name of the applicant which has no value in the eyes of law; that applicant was neither arrested at spot and the alleged recovery has been foisted upon him. She has relied upon the decisions reported as 1998 SCMR, 32, 1998 P.Cr.l. 1192, 2004 P.Cr.R 1289, 2012 MLD 319, 2004, P.Cr.l. L.J 1246, 2006 YLR 1089, 2006 P.Cr.L.J 1720, 2006 P.Cr.L.J. 425, 2006 YLR 3167, 2006 P.Cr.R 295, 2006 MLD 81, 2012 MLD 343

4. Conversely Mr. Faheem Hussain Panhwar, learned Deputy P.G. Sindh opposed the grant of bail to the applicant on the ground that recovery has been effected from the co-accused who have disclosed the name of present applicant/accused; that applicant was identified in the identification parade held before the Magistrate; that there is sufficient material available on record to connect the applicant with the commission of the offence, thus the applicant/accused is not entitled for concession of bail.

5. Perusal of record reveals that applicant was involved on the statement of co-accused and it has been agitated by the learned counsel for the applicant that statement of co-accused has no value in the eyes of law. The contention of learned counsel for the applicant is misconceived as the statement of co-accused ex-facie is an incriminating piece of evidence, which alone may not be sufficient to convict someone, but in terms of Article 43 of the Qanun-e-Shahadat Order, it can be used as a circumstantial piece of evidence even at bail stage to form a prima facie view about the involvement of a person. Reliance is placed upon the case reported as **Ghulam Ahmed Chishti vs. The State and another** (2013 SCMR 385). In the present case, though FIR was lodged against unknown accused persons which shows that accused were not previously known either to the complainant or witnesses and nothing has been pointed out by the learned counsel for the applicant to falsely implicate the applicant in such heinous offences. Further, the recovery of robbed articles and illicit arms was effected from the possession of the co-accused, who disclosed the name of applicant/accused as participant in the commission of present offence as well as he was also identified by P.W **Mustafa** in the identification parade before the Magistrate. There is sufficient material available on record to

connect the applicant with the commission of alleged offences. With regard to the delay in lodging the FIR, the delay itself is not sufficient to grant bail unless the same is supported by other circumstances. Reliance is placed upon the case reported as **Mazhar Iqbal v. The State and others (2010 SCMR 1171)**, wherein the Honourable Supreme Court has held as under:-

"No doubt, there is delay in lodging the FIR but the complainant has tried to explain such delay. However, the delay by itself is not sufficient to grant of bail unless the same is supported by other circumstances."

6. No proof has been brought on record by the applicant that FIR has been delayed and lodged after due deliberation and consultation to involve the applicant in such heinous offences. With regard to question of false implication of the applicant, the same can only be decided after recording of evidence and at bail stage only tentative assessment is required and no deeper appreciation is to be undertaken.

7. With regard to the case law relied upon by the learned counsel for the applicant/accused, it is germane to say that in criminal administration of justice; each case is to be decided on its' own peculiar facts and circumstances, therefore, by examination of the above case law, it is manifest that facts and circumstances are entirely different, thus such precedents are not helpful in the instant case to the applicant.

8. As observed above, sufficient evidence/material is available on record to connect the applicant with the commission of non-bailable offences, as such the case of the applicant does not call for further inquiry. Accordingly, instant bail application of the applicant is **dismissed** having no merit.

9. Needless, to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of applicant on merits.

10. While parting, it is found that Investigation Officer has failed to record the statement of eye witness Hussain. When asked to the I.O, who was present in Court, regarding such omission, he stated that he could not

record the statement of P.W Hussain, as he was at his native village. The reason assigned by I.O is shocking as this is a case of dacoity with murder and Investigation Officer failed to examine star witness of the case. It is settled principle that Investigation Officers are required to take every step to ensure that real accused are arraigned. Here omission of recording statement by the Investigation Officer looks deliberate and colorful exercise. Accordingly, AIGP Karachi shall initiate departmental proceedings against the I.O through an Inquiry Officer after due notice in accordance with law.

Office shall communicate this order to AIGP Karachi for information and compliance.

J U D G E

Sajid