

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No.537 of 2021

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

For hearing of bail application.

29th June 2021

Ms. Zubair Ahmed, advocate for applicant/accused.
Mr. Faheem Hussain Panhwar, DPG alongwith I.O. Inspector Muhammad
Aslam, P.S. Makli

SALAHUDDIN PANHWAR, J: The applicant/accused Ali Haider seeks post-arrest bail in Crime No. 119 of 2020 for an offence punishable under sections 302/324/147/148 read with section 149 PP,C registered with Police station Makli.

02. The relevant facts, as set-out in the FIR, are that on 27.07.2020 at 1630 hours within the limits of PS Makli, the applicant along with co-accused Haji Jamal Khan Mari, Bashir, absconding accused Rehmatullah Bughti and an unknown person committed qatl-e-amd of deceased Khamiso Mallah and caused injuries to Jhang Ali Mallah. The role assigned to the applicant in the FIR is of causing injuries to the injured Jhang Ali Mallah.

03. Learned counsel for the applicant/accused *inter-alia* contends that applicant has been falsely implicated in the instant case; that investigation conducted twice wherein two versions were introduced which makes the case of further inquiry; that there are conflicting statements recorded under section 161 Cr.P.C of PW Wahid Bux; that there is delay in lodging of the FIR for which no plausible explanation has been furnished; that in the FIR the alleged role of causing injuries to Jhang Ali Mallah was assigned to the applicant but the same are on non-vital parts; that there is admitted enmity between the parties therefore, false implication of the applicant cannot be ruled out; that co-accused Bashir and Haji Jamal have been granted pre-arrest bail by this Court, hence the

applicant is also entitled for grant of bail. He has relied upon the decisions reported as 2011 P.Cr.L.J. 232 [Karachi] and 2021 SCMR 63.

04. Conversely learned DPG opposed the instant bail application on the ground that there is sufficient material available on the record to connect the applicant with the commission of crime; that delay in lodging of the FIR has been properly explained by the complainant; that grant of pre-arrest bail to the co-accused Bashir and Haji Jamal are on different footings; that specific role of causing injuries to Jhang Ali Mallah has been assigned to the applicant; that injured P.W Jhang Ali Mallah in his statement under Section 161 Cr.P.C supported the prosecution case; thus the applicant/accused is not entitled for concession of bail.

05. Heard and perused the record.

06. Perusal of record reveals that applicant is directly charged in the FIR and specific role of effective firing has been attributed to the applicant; that names of eye-witnesses have been disclosed in the FIR and eye-witnesses have fully implicated the present applicant in their statements recorded under section 161, Cr.P.C; that medical evidence also supports prosecution's version. With regard to the argument of learned counsel for the applicant that the injuries alleged against the applicant were on non-vital parts of the body of P.W Jhang Ali Mallah, hence the applicant is entitled for the grant of bail. This, *prima facie*, is misconceived for the reason that a murderous assault as defined in Section 324 PPC draws no anatomical distinction between vital or non-vital parts of human body, particularly when the crime weapon is weapon with trigger. Once the triggered is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested because the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. In the case reported as **Sheqab Muhammad vs. The State and others (2020 SCMR 1486)**, the Honourable Supreme Court while declining bail to accused observed as under:

“3. Arguments that ocular account stands contradicted by medical evidence and in the absence of an independent witness from the public, petitioner's general participation, resulting into an injury on a non-vital part of the body, particularly in the

absence of repeated fire shot, squarely brings his case within the remit of further probe, are not only beside the mark but also cannot be attended without undertaking an in-depth analysis of the prosecution case, an exercise forbidden by law at bail stage. In a daylight affair, two persons sustained firearm injuries besides the one having endured violence through blunt means and as such requires no public support to drive home the charge; their statements supported by medical examinations of even date, cumulatively bring petitioner's case prima facie within the mischief of section 324 of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view whereof, he cannot be released on bail in the absence of any consideration within the purview of subsection (2) of section 497 of the Code *ibid*. Similarly, murderous assault as defined in the section *ibid* draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. Exercise of discretion by the High Court being well within the bounds of law calls for no interference. Petition fails. Leave declined."

07. With regard to conflicting statements recorded under Section 161 Cr.P.C of P.W Wahid, suffice it to observe that making any comment on the worth of the said statements at this stage especially when the trial has already commenced *trial* will not be desirable, as the same would amount to traversing the realm of deeper appreciation of the material available on the record which is not permissible at bail stage. Worth adding that *conflict*, if any, surfaced through subsequent 161 Cr.P.C statement which, *prima facie*, is not permissible unless a challenge to contents of such statement is made by person *himself*. Delay in lodging the FIR has been properly explained by the complainant. Even otherwise, 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."

08. With regard to the argument of learned counsel for the applicant that co-accused Bashir and Haji Jamal have been granted bail hence the applicant is

also entitled for grant of bail, the case of co-accused was on different footings hence principle of *rule of consistency* can't be pressed unless the applicant/accused establishes that his case and that of co-accused, admitted to bail, stand on same footing. Even otherwise it is well settled principle of law that for getting the relief of bail accused has to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case and he is entitled to avail the benefit of it. However, in the present case applicant has failed to create any reasonable doubt/suspicion in the prosecution case rather prosecution is in possession of sufficient material/ evidence, constituting 'reasonable grounds' that accused has committed an offence falling within the prohibitory limb of Section 497, Cr.P.C.

09. 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.

10. 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.

11. 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.

12. Besides, while parting, it is material to mention that investigation officer despite of evidence of injured Jhang Ali Mallah submitted challan against the present applicant under section 120-B, whereas this is a murder case and all witnesses deposed against accused persons including one Suzuki driver namely Wahid Bux. Earlier investigation officer recorded his 161 Cr.P.C. statement which is in line with prosecution case including FIR whereas, matter was referred for further investigation to the second I.O., who twisted the evidence of that material witness and submitted challan in different sections while

exonerating the applicant from the liability of murder, which shows deliberate move by the I.O. with colorful exercise, hence, requires deep probe towards such conduct who, *otherwise*, was to complete investigation wherein one lost his life and other received fire-arms injuries. Accordingly, SSP, District Thatta shall himself conduct inquiry after issuing notice to 2nd I.O. and shall ensure that legal proceedings are taken in accordance with law.

J U D G E

Sajid