ORDER SHEET

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 81 of 2022

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

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

Date of hearing: 04.10.2022 & 10th October 2022
Date of order: 10th October 2022

M/s. Athar Abbas Solangi & Mr. Iftikhar Ahmed Shah advocates for applicant.

Mr. Salahuddin Panhwar advocate for complainant a/w complainant
Mr. Talib Ali Memon, A.P.G.
Ms. Seema Zaidi Addl. P.G.
Mr. Zahid Mazari A.A.G.

SALAHUDDIN PANHWAR, J: Applicant/accused Ali Gohar seeks post-arrest bail in Crime No. 20 of 2018 for offences punishable under sections 302/504/109/114/148/149 PPC registered at P.S A-Section, Mehar, District Dadu.

2. Briefly the facts of the prosecution case as alleged by the complainant are that the applicant/accused with rest of the culprits in prosecution of their common object, on the abetment of their chief, committed death of Karamullah Chandio, Mukhtiar Ahmed and Qabil Hussain in a broad daylight.

3. Learned counsel for the applicant/accused *inter-alia* contends that applicant has been falsely implicated by the complainant party due to previous feud ; that there is delay of 16 hours in registration of the FIR, for which no plausible explanation has been furnished; that initially sections 6/7 of Anti-Terrorism Act, 1997 were applied in the FIR, but on the orders of Hon'ble Supreme Court, the case was transferred to the ordinary Court for its trial; that the I.O has disbelieved the version of the complainant in respect of two co-accused hence in that situation false implication of the applicant cannot be ruled out; that since the date of his arrest, the applicant is in jail and he cannot be detained there indefinitely. He lastly submitted that on

merits as well as on statutory ground the applicant /accused is entitled for grant of bail.

4. In contra, learned Additional P.G. Sindh duly assisted by learned counsel for the complainant while opposing the grant of bail to the applicant/accused, contended that the applicant is nominated in the FIR attributing specific role of causing firearm injuries to the deceased; that the prosecution witnesses in their 161 Cr.P.C statements have fully implicated him with the commission of the offence, delay in conclusion of trial is being occurred due to applicant and co-accused, hence the applicant is not entitled for concession of bail.

5. Heard and perused the record.

6. Of course, if it appears to the Court at any stage of trial that there are no reasonable grounds for believing that the accused had committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail. While exercising such discretion, the Courts must always satisfy its conscious between existence or non-existence of **'reasonable grounds'** to believe link or otherwise of accused with offence, particularly when offence is falling within prohibitory clause. In every criminal case some scope for further inquiry into the guilt of accused exists, but on that consideration alone it cannot be claimed by the accused as a matter of right that he is entitled to bail. For bringing the case in the ambit of further inquiry, there must be some *prima facie* evidence, which on the tentative assessment, is sufficient to create doubt with respect to involvement of accused in the crime. In Iqbal Hussain v. Abdul Sattar & another (PLD 1990 SC 758) while setting aside the bail granting order of the High Court, the court referred to the tendency in courts to misconstrue the concept of further enquiry and held as follows:

> *'It may straightway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C which, with respect, has not been correctly understood by the learned Judge in the High Court nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element, as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the police or by the court in respect of the*

> *merits of the case. The learned Judge in this case avoided rendering such prima facie opinion on merits as it is mentioned in subsection (2) of section 497 Cr.P.C, and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C, the respondent was not entitled to bail thereunder as of right.*

Each case has its own foundation of facts, therefore, it is not possible to put each and every case in the cradle of further inquiry to provide relief to accused by releasing on bail merely by repeating words of ***further inquiry*** or raising ***presumptions*** and ***surmises*** but such consideration must remain confined to ***tentative assessment*** of available material only.

7. Now coming to the merits of the case, in the present case applicant/accused is nominated by name in the FIR with specific role of causing fire shot injuries to the deceased, resulting into their deaths, which is supported by the prosecution witnesses in their statements recorded under section 161 Cr.P.C. False implication of the applicant/accused at the hands of complainant in collusion with Police cannot be ascertained at this stage. No doubt there is delay of about 16 hours in lodging the FIR but delay in FIR per-se is no ground for grant of bail, if otherwise accused appears to be linked with offence with which he is charged. It is well settled that deeper appreciation of evidence is not permissible at bail stage. Even otherwise, the applicant/accused is charged with an offence punishable with death or imprisonment for life and *presently* there appears no reasonable ground for believing that he is not guilty of the offence, hence applicant has failed to make out a case on merits.

8. With regard to delay in conclusion of trial, it would be conducive to refer paragraph No. 45 of judgment of the apex Court in the case of Liaquat Hussain Vs. Federation of Pakistan, [PLD 1999 SC 504] which reads as under:-

> *"45. Before concluding the above discussion, it will not be out of context to point out that the third proviso to section 497 of the Criminal Procedure Code is also substantially contributing towards the delay in the disposal of criminal cases as it entitles an accused person accused of an offence not punishable with death to obtain bail on the expiry of one year from the date of his arrest, and in case of an offence punishable with death on the expiry of two years' period from the date of his arrest. Some of the accused persons by* ***their design*** *ensure that the trials of their cases are delayed, so that they may come*

> *out of jails on the expiry of the above statutory periods. In my humble view, the above provision has been misused and the same needs to be deleted. I may also observe that even before the incorporation of the above proviso, it was open to a Court to grant bail in a fit case on the ground of inordinate delay in the trial of a case, but no accused person was, entitled to claim bail as a matter of right on the expiry of certain period."*

9. However, in order to ascertain the correct position that who played key role in delaying the matter, perusal of record it appears that prosecution cannot be blamed but the accused persons are responsible for causing delay in conclusion of the trial. Perusal of record reflects that one of the co-accused has also filed a Criminal Revision Application No.S-71 of 2021 before this Court at Circuit Court Larkana wherein vide order dated 08.10.2021 framing of charge has been stopped, hence still charge could not be framed, therefore, delay in conclusion of the trial cannot be attributed on the part of prosecution but it is on the part of accused. Besides, accused persons challenged jurisdiction of Anti-Terrorism Court and contested upto the apex Court, hence, consumed plenty of time while getting present case out of the purview of Anti-Terrorism, that the time consumed in that litigation cannot be contributed on the part of prosecution. The object and purpose of *statutory* ground was never meant to delay the *trial* but it was a caution whereby the prosecution was hammered that in case trial is delayed because of *prosecution* then such failure will result in earning a right to insist bail because the law always requires maintaining a balance. However, if the accused or one, representing or acting on his behalf, from his own conduct and attitude causes the delay then such *benefit* would not be available for him because none *legally* can gain a benefit of his own wrongs. This has been the reason that while appreciating such conduct the bail on statutory ground was refused by Honourable Apex Court in case of *Babar Hussain v. State & Ors* (2016 SCMR 1538), while holding as:-

> *"4. We have heard the parties; Counsel as well as the learned Law Officer and have perused the record. 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."*

10. Now, looking to the gravity and severity of the act alleged against the applicant, it is to be seen whether the applicant/accused is also

hardened, desperate or dangerous criminal, within the meaning of expression as used in the fourth proviso to Section 497(1), Cr.P.C. It is well settled that in order to bring an accused within the compass of a hardened, desperate or dangerous criminal, it is not necessary to prove that he has a previous criminal record of conviction, the previous criminal record of convictions or of pendency of other criminal cases, though may be taken into consideration as a supporting material, but the same is not an exclusive deciding factor to form an opinion as to whether the accused is a hardened, desperate or dangerous criminal even if the act alleged is committed for the first time. In the case reported as *Allah Wasay vs. The State and others (PLD 2022 S.C 541),* the Hon'ble Apex Court has inter-alia held that:

> *"7. The meaning and scope of the phrase "hardened, desperate or dangerous criminal" have also been explained in Shakeel Shah, wherein this Court held that the words "hardened, desperate or dangerous" point towards a person who is likely to seriously injure and hurt others without caring for the consequences of his violent act and can pose a serious threat to the society if set free on bail, and such tentative opinion as to the character of the accused is to be formed by the court upon careful examination of the facts and circumstances of the case. We are of the considered view that the court may also refer to any previous criminal record, if available, for forming such opinion but it matters little if the accused does not have a previous criminal record. The very gravity and severity of the act alleged to have been committed by the accused, even though for the first time, may be sufficient to attract the fourth proviso to section 497(1) Cr.P.C. in the peculiar facts and circumstances of a case and may lead the court to form opinion that the accused is a hardened, desperate or a dangerous criminal."*

11. In the present case, the nature and manner of the commission of offence and the role attributed to the applicant is that he allegedly committed murder of the deceased by causing fire shot injuries with Kalashnikov out of whom one deceased also received fire shot injury on his face are the circumstances, which describe him as a person who can be harmful and dangerous for the society, if released on bail and thus makes him to fall within the scope of the expression of "a hardened, desperate or dangerous criminal" as used in the fourth proviso to Section 497(1), Cr.P.C. He is therefore not entitled to the benefit of the third proviso to Section 497(1), Cr.P.C on this score as well.

12. In the above circumstances, prima-facie, there are reasonable grounds to believe that applicant/accused has committed alleged offence, therefore, I am of the considered view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application, being devoid of merit, is **dismissed** accordingly.

13. Needless to mention that the above observations are purely tentative in nature and the same are only meant for the purpose of this bail application and would have no impact or effect on any party during the trial.

J U D G E

Sajid

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