

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Bail Appln: No.S-945 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.

For hearing of main case

08.12.2022

Mr. Zafar Ali Leghari advocate for applicant.

Mr. Shahid A. Shaikh, Addl. P.G. for the State.

Mr. Muhammad Sadique Buledi advocate for complainant.

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ORDER

MUHAMMAD SALEEM JESSAR,J- Through this bail application, applicant Nizamuddin seeks his admission on post-arrest bail in Crime No.63 of 2022 registered with Police Station Kazi Ahmed District Shaheed Benazirabad for offence under sections 302, 449, 34 PPC.

2. The bail plea preferred by applicant was declined by the trial Court by means of order dated 18.08.2022. Hence this bail application.

3. Facts of the case are already mentioned in F.I.R. as well impugned order of the trial Court hence need not to reiterate the same.

4. Learned counsel for applicant submits that name of applicant does not find place under the F.I.R; however, he has been implicated by complainant through his further statement, which was recorded by the police at belated stage. He next submits that main role of causing firearm injury to deceased Mst. Afroze is assigned to co-accused Babar Ali Unar, who is in custody. He, therefore, submits that case against applicant requires further inquiry. In support of his contentions, he places reliance upon the cases of NISAR AHMED vs. THE STATE (2014 SCMR 27), KANEEZ FATIMA v. STATE (2017 Y.L.R. 433), MUHAMMAD IQBAL v. STATE (2017 SCMR 1932) and ALI OGHABI v. STATE (2019 P.Cr.L.J Note-19).

5. Mr. Shahid A. Shaikh, learned Addl. P.G. appearing for State opposes the bail application on the ground that applicant was implicated by complainant through his statement under section 162, Cr.P.C and that this is murder case which carries capital punishment, therefore, the applicant is not entitled for concession of bail.

6. Mr. Muhammad Sadique Buledi, Advocate for complainant also opposes the bail application and submits that applicant had facilitated the co-accused Babar Ali in the commission of offence, therefore, he is not entitled for bail.

7. Heard. Record perused.

8. Per F.I.R, the incident is said to have occurred on 14.04.2022 at 7.00 pm / evening and report thereof was lodged on 15.04.2022 at 2100 hours i.e. after the delay of about 26 hours though the distance between police station and place of occurrence is one kilometer only. No plausible explanation has been furnished by prosecution for such an inordinate delay. The delay in criminal cases has always been deprecated by the Superior Courts to be fatal for prosecution. It is manifest from the F.I.R. that co-accused Babar Ali Unar along with two unknown culprits had entered into the house of complainant and thereby Babar Ali caused firearm injury to deceased Mst. Afroz, which resulted her death. Two unknown culprits shown in the F.I.R had not been assigned any specific role or overt act to anybody else including the complainant. The PWs Zubair Ali, the brother of complainant and Sadaqat, cousin of complainant have been named in the F.I.R as eye-witnesses and were examined by the I.O under section 161 Cr.P.C. on same date viz. 15.04.2022, had also not implicated the applicant in their respective 161 Cr.P.C. statements. It is astonishing to note the complainant got recorded his further statement before the police on 20.06.2022 after the delay of about more than two months and stated that applicant Nizamuddin is also involved in this case, therefore, he may be implicated and prosecuted. Perusal of his further statement reveals no specific role has been assigned to him even the

complainant did not disclose the source of his involvement in this case. Hence, after recording further statement of the complainant, the police arrested the applicant on 22.06.2022 even then nothing incriminating was recovered from his possession. The co-accused Babar Ali who too was arrested by the police had also produced the offensive weapon and is in custody. The evidence against the applicant is that he has been implicated by complainant through his further statement which too was recorded at belated stage. It is well settled principle of law that any statement or further statement of the first informant recorded during the investigation by the police would neither be equated with first information report nor read as part of it and involvement of additional accused through such statement is fake improvement, which made the basis for false implication. The further statement being fake improvement cannot be equated with status of F.I.R and therefore, bail cannot be declined to an accused on basis of such a supplementary statement which otherwise has been treated by the Superior Courts to be fake improvement. Reliance in this respect is placed upon the case of NOOR MUHAMMAD v. The STATE (2008 SCMR 1556) in which the Honourable Supreme Court of Pakistan has laid down in Para-6 of the order as under:-

“6.....In case the contents of the first information report and supplementary statement are put in a juxtaposition then it is crystal clear that the complainant had taken altogether U-Turn from his previous stand. This fact makes it a case of further inquiry under section. 497, Cr.P.C. Moreover, since name of petitioner and co-accused were not mentioned in the F.I.R. and was mentioned in the supplementary statement by complainant which fact also brings the case within the ambit of further inquiry. It was held by this Court in the case of Falak Sher alias Sheru v. The State 1995 SCMR 1350 that F.I.R. is the document which is entered into book maintained at the police station °at the complaint of informant and brings the law into motion whereby police starts investigation of the case under section 156, Cr.P.C. Any statement or further statement of the first informant recorded during the investigation by police would neither be equipped with First Information Report nor read as part of it. Similarly it was held by this Court in the case of Khalid Javed and another v. The State 2003 SCMR 1419 that any statement or further statement of the first informant recorded during the investigation by the police would

neither be equated with F.I.R. nor read as part of the same and the value of the supplementary statement, therefore, will be determined keeping in view the principles enunciated by the superior Courts in this behalf.”

9. Further, the unknown culprits shown in the F.I.R. had not been assigned any role or causing firearm injury to the deceased, the complainant or any prosecution witness, therefore, the applicant cannot be burdened with capital charge merely on the basis of supplementary statement particularly when no role or source of implication has been disclosed by complainant. The F.I.R. does not show any direct or indirect motive against the applicant whereas co-accused Babar Ali was not only named under F.I.R. but has also been assigned motive with specific role of causing firearm injury to deceased Mst. Afroz.

10. It is also well settled principle of law that every accused would be presumed to be blue eyed boy of law until and unless he is found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Moreover, bail cannot be withheld as pre-mature punishment to an accused when otherwise he has succeeded to make out a good prima facie case for his release on bail.

11. In view of above legal position, I am of the view that applicant has made out a good prima facie case for his release on bail during pendency of trial within the meaning of sub-section (2) to Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.500,000/-(Rupees five lacs) and PR bond in the like amount to the satisfaction of learned trial Court.

12. Needless to mention that the observations made herein above are tentative in nature and will not prejudice the case of either party at the time of final decision.

JUDGE