

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1894 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

13th September, 2022

Syed Amir Ali Shah Jeelani, Advocate a/w applicants.
Syed Bashir Hussain Shah, Advocate a/w complainant.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Malik Nasir and Uroos Masih have sought pre-arrest bail in crime number 156 of 2020 registered under sections 302 and 34 P.P.C. at the Gizri police station. Earlier, their application seeking bail was dismissed by the learned 3rd Additional Sessions Judge, Karachi South on 05.12.2020.

2. The aforementioned F.I.R. was registered on the complaint of Suraiya Masih, on 15.03.2020. Suraiya recorded that her son Mark Masih had invested Rs. 1,200,000 with applicant Malik Nasir in connection with a guest house business. A dispute between Mark and Nasir had arisen over a Rs. 50,000 profit which Nasir was supposed to give Marks every month. On 13.03.2020, Suraiya received a phone call from one Rafiq Bengali who told her that Marks was unwell and had been admitted to the Jinnah Hospital. By the time the family reached the hospital, Marks had died.

3. I have heard the learned counsel for the applicants and the complainant as well as the learned APG.

4. Learned counsel very candidly conceded upon a query that there was no evidence on record apart from what the complainant had stated in the F.I.R. While also admitting that the complainant was not an eye witness to the occurrence, he insisted that the applicants were guilty of the murder of Mark because the complainant simply thought that they were the people who murdered her son because of a monetary dispute. The learned APG submitted that the only possible evidence with the prosecution was a statement under section 161 Cr.P.C. recorded by one Nawaz Ali, who was a waiter at the guesthouse. Learned APG however further submitted that according to Nawaz Ali on the night preceding the day of the death of Mark, he (Mark) along with

one Raja Rameez and some other friends had indulged heavily in an alcohol and drugs (charas to be specific) party in a room of the guesthouse. At 11 a.m. in the morning, Nawaz Ali learnt from the janitor of the guest house i.e. Tariq Masih, that Marks had collapsed in the bathroom. He was then taken to the hospital in an ambulance. Another witness, Ghulam Shabbir, who was also a waiter at the guesthouse also recorded a similar statement as Nawaz Ali's. Ghulam Shabbir further stated that Tariq Masih had found the deceased collapsed in the bathroom with half his trousers down and that there was vomit and urine all over the bathroom. Tariq Masih, the janitor, has also recorded a similar statement. The post mortem report of the deceased on record is prima facie inconclusive. Samples of the viscera were taken for examination and phosphine was detected in the body of the deceased. The doctor, Abdul Ghaffar, who conducted the post mortem, however in a supplementary post mortem report has stood by his opinion that the dead body showed no signs of phosphine poisoning. The truth will only be exposed when all the witnesses are examined at trial. At the moment however, the evidence on record is not sufficient to deny the applicants bail.

5. The prosecution has asserted that the motive behind the murder is a business dispute. There is however no evidence on record yet to substantiate the same. Having said that, the fact that the complainant believes that money was the cause of the murder – which is prima facie not supported by any evidence – I am unable to conclusively rule out malafide at this preliminary stage. Even otherwise, in the circumstances of the case, where upon a tentative assessment there appears to be no evidence yet supporting the prosecution case, there will be no point in putting the applicants through the humiliation of arrest and imprisonment only for them to be bailed out later.

6. In view of the above, further inquiry is required to establish the nexus of the applicants with the crime complained of. The pre-arrest bail granted to the applicants earlier therefore is confirmed on the same terms and conditions.

JUDGE