

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 813 of 2023

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

11-05-2023

Mr. Saifullah, Advocate for applicant.
Ms. Robina Qadir, DPG.

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Omar Sial, J: Samiullah has sought post arrest bail in crime number 388 of 2022 registered under sections 302, 109 and 34 P.P.C. at the Nazimabad police station in Karachi. Earlier, his application seeking bail was dismissed on 20.03.2023 by the learned 7th Additional Sessions Judge, Karachi Central.

2. The aforementioned F.I.R. was registered on 30.07.2022 on the complaint of Qiasuddin. Qiasuddin reported that his brother Habib-ur-Rehman had eloped with Abida, who was the daughter of Bismillah. On 30.04.2022, while Qiasuddin was in Dubai, he received a phone call that Bismillah, Abdullah, Abdul Qadeer, Samiullah, Naseebullah and Matiullah had killed Habib-ur-Rehman. Qiasuddin came back to Karachi and was then told by a co-villager that 4 unknown persons had murdered Habib-ur-Rehman.

3. I have heard the learned counsel for the applicant and the learned APG. None effected an appearance on behalf of the complainant despite notice. My observations and findings are as follows.

4. The prosecution has completely failed to provide a satisfactory explanation regarding what evidence was gathered by the investigation. It is acknowledged that the name of the person who was discovered dead was written as Sattar s/o Unknown in the documents connected with the section 174 Cr.P.C. but that in the F.I.R. his name appeared as Habib-ur-Rehman.

5. The challan reflects that the place of incident was shown to the police on 29.07.2022. Indeed the memo of inspection shows that on that date inspection was done between 2250 and 2330 hours. No explanation has been provided by the prosecution as to how could Qiasuddin show the place of incident to the investigating officer on 29.07.2022 when according to him himself he was in Dubai when he received information of the death on 30.07.2022. The fact that there are 2 dubious looking memos of inspection on record with 2 different dates, prima facie reflects malafide on the part of the complainant and the police. Alleged recovery of 4 empties from the place of incident also becomes doubtful.

6. There is one witness by the name of Ali who was the brother of the deceased and was the one who claimed that the accused had come to his house on 29.07.2022 and told him that they had killed Habib-ur-Rehman. The involvement of the applicants in this crime stems solely from this statement. It is surprising though that Ali did not record his statement under section 161 Cr.P.C. until 25.09.2022. The prosecution has failed to provide any cogent explanation for the statement of the main witness to be recorded after 2 months; however Ali himself has recorded that because of heavy rains he could not go and record his statement. A lame excuse was given. Malafide, once again, cannot be ruled out.

7. The statement which Qiasuddin recorded, ostensibly on the basis of what Ali told him, has specific names of all the accused. It is pertinent to mention that even in the section 161 Cr.P.C. statement that Ali recorded 2 months after the incident, does not contain any name but that of Bismillah Khan. The name of the applicant seems to have been added by the complainant himself. The fact that police claim that the complainant cannot be presently located creates further doubts in the prosecution case.

8. A further anomaly is that the documents on record show that Qiasuddin in his section 161 Cr.P.C. statement which was recorded on 30.07.2022 says that the investigating officer has asked him to register an F.I.R. but that Qiasuddin told him that they live in a tribal

system and that they will first hold a Jirga to solve the issue. The prosecution has completely failed to provide a reason as to how the F.I.R. was registered on 30.07.2022 when on that same date, Qiasuddin had declined to register the F.I.R.

9. The learned prosecutor was asked categorically as to what was the evidence against the applicant. The reply to the query was that there is a call data record which shows the presence of the applicant. How did the prosecutor decipher this is confusing as the learned prosecutor was unable to point out any entries on the call data record which would support her contention.

10. There are a number of lacunas in the prosecution case which create substantial doubt in its case; however, I have refrained from making further observations intentionally.

11. The case against the applicant is one of further inquiry. He is therefore admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 100,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE