

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. B.A. No. 701 of 2022

Cr. B.A. No. 788 of 2022

Cr. B.A. No.800 of 2022

Cr. B.A. No. 801 of 2022

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Date

Order with signature of Judge

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For hearing of bail application.

18.07.2023

M/s. Syed Amir Ali Shah, Riaz Akhtar Soomro and Muhammad Khalid Shaikh, Advocates for applicants/accused

Mr. Muhammad Jibran Nasir, Advocate for the legal heirs of deceased.

Applicants are present in Court.

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1. Applicants Saadat Ahmed, Syed Suleman Ali, Zulfiqar Ali and Syed Kamran Ali, are seeking pre-arrest bail in FIR No.254/2020, under Section 302/34 PPC, at P.S. Al-Falah, Karachi. These four bail applications are being determined through this common order.

2. The allegation against the applicants/accused are that they with common intention committed the murder of deceased.

3. Per learned counsel the applicants/accused two FIR were lodged one of the commission of theft at the house of applicants and second of commission of murder. They further contended that there was a family ceremony in the house of the applicant where the offence of theft was committed. They further contended that when the applicants after attending the ceremony arrived their home found their belongings in scattered condition, thereafter, FIR of theft was also lodged. They further contended that applicants are innocent and no animosity with the deceased. They further contended that motive

of commission of the offence will be adjudged after completion of trial, therefore, they are entitled for confirmation of bail.

4. On the other hand, learned counsel for the complainant assisted by learned DPG argued that it is a pre-planned murder committed by the applicants who are police officials. He further contended that the applicants being police officials malafidely washed out the place of incident to conceal the evidence and managed a fake story of theft in his house although the offence of murder of deceased was committed by the applicants/accused which offence is not bailable and also falls within the ambit of prohibitory clause, therefore, applicants are not entitled for concession of bail, hence, the ad-interim pre-arrest bail be recalled.

5. I have heard the submissions of learned counsel for the parties as well as learned DPG and scanned the available material. It is apparent from the record that deceased who was of teenage was murdered, found in injured condition at the house of applicants. It is also apparent from the record that the applicants/accused are police officials surreptitiously created many doubt into the prosecution case to avail the benefit of doubt. The learned trial Court in the impugned order discussed the circumstances as follows:-

“As of now this Court is only seize with the bail applications filed by the applicants/accused in response to the surviving FIR No.254/2020. The FIR does not mention the specific name of accused and similarly does not attribute the role to each accused at the place of incident. **Initially the FIR was lodged U/s 380 r/w 34 PPC by the complainant, but subsequently sections 302/201 PPC have been added to this FIR. Undeniably, a young boy of having age of 19 years has lost his life in mysterious circumstances.....Firstly in this FIR the deceased was introduced as a friend of complainant family, but in the cancelled FIR the deceased was named as a suspicious dacoit. Such state of affairs create doubts regarding the**

conduct of both the complainants in their FIRs. .... Reportedly the single fatal shot was made by PC Zulfiqar from the crime weapon upon the deceased at the place of incident which does not fit into the faculty of my mind. ...As a matter of fact and record the injured/deceased Hassan Abbas remained 4 days in hospital for treatment but no effort was made to record death statement by the police for reasons best known to them. The change of shift between PC Zulfiqar and PC Salman at the relevant time also creates doubt into the conduct of police officials.

6. It is gleaned from appraisal of the foregoing that the deceased Hassan Abbas remained in the hospital having received an entry wound but the I.O of the case under the influence of applicants/accused (being police officials) failed to record the last statement of the deceased. The lacuna and the discrepancy committed by the I.O in investigating the case at hand in which a young boy was murdered at the hands of applicants/accused. It is settled principle that in criminal case the lacuna and the discrepancies on the part of the investigation agencies never fatal the complainant case. It also appears from the record that the applicants/accused being police officials actively found in connivance with each other for hiding the evidence to preserve themselves from the clutches of law.

7. It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the applicant/accused has to satisfy the Court with regard to the basic conditions quantified under Section 497 of the Code of Criminal Procedure, 1898 ("Cr.PC") vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against

him and the case is one of further inquiry. In the case of Rana Abdul Khaliq Vs The State and others (2019 SCMR 1129), Hon'ble Supreme Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore an accused seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427), the Hon'ble Supreme Court has discussed the framework and guidelines for granting bail before arrest under Section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the accused were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the accused, or that the accused would in such an eventuality

suffer irreparable harm. The Hon'ble Supreme Court again in the case of Ahtesham Ali v. The State (2023 SCMR 975) laid down the following parameters for pre-arrest bail:-

(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such an accused should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.

8. It is settled principle of law while entertaining bail plea of any accused that Court has only to see whether accused is connected with the commission of crime or not. Furthermore, the question of granting or refusing bail depends upon particular circumstances of each case. The discretion of grant or refusal of bail under section 497 Cr.P.C must be exercised on judicial principles. Bail is always under the discretion of the Court and this discretion is necessarily to be exercised upon the

facts and circumstances of each case according to sound judicial principles. The settled position of law is that accused cannot claim bail as a matter of right in non bailable offence. The facts and circumstances of each and every case are to be kept in mind while deciding bail application<sup>1</sup>.

9. For the foregoing reasons, I do not find merit in the bail applications which stand dismissed and interim pre-arrest bail granted to the applicants/accused is hereby recalled.

10. Before parting with the above, findings are tentative in nature which renders no help to any party. Office to place copy of this order in connected files.

JUDGE

Aadil Arab

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<sup>1</sup> PLD 1997 S.C 545 and 2002 SCMR 442