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ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No.982 of 2023
(Waqar & others versus The State)
Cr. Bail Application No.2499 of 2023
(Muhammad Ashraf versus The State)

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DATE	ORDER WITH SIGNATURE(S) OF JUDGE (S)

For hearing of bail application.

04.07.2023

M/s Muhammad Adeel Meo and Muhammad Ismail Meo, advocate for the applicants.
Mr. Muntazir Mehdi, APG.
Mr. Raja Rashid Ali, advocate for the complainant.

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O R D E R

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Through the Cr. B.A No.2499/2022, applicant Muhammad Ashraf seeks interim pre-arrest bail in FIR No.635/2022 under Section 302, 337-A(i)/34 PPC registered at Police Station Nazimabad Karachi, inter-alia, on the ground that his earlier bail was recalled by the learned VII-Additional Sessions Judge, Karachi Central / MCTC-II vide order dated 20.12.2022 and after such refusal he approached this Court for grant of extraordinary concession of pre-arrest bail in terms of Section 498-A Cr.P.C. This Court vide order dated 26.12.2022 extended the concession to the applicant subject to his furnishing surety in the sum of Rs.100,000/- and PR bond in the like amount to the satisfaction of the Nazir of this Court. The applicant furnished his surety vide endorsement of Nazir dated 26.12.2022 and since then he is attending the Court regularly.

2. Learned counsel for the applicant Muhammad Ashraf has mainly contended that there are ulterior motives on behalf of the complainant who did not allow the Medical Officer to conduct a postmortem of the deceased lady and now dragging the applicant in the aforesaid crime just to humiliate and disgrace him and his family members, besides, police is in active connivance with the complainant.

3. Learned APG assisted by learned counsel for the complainant has argued that postmortem of deceased Mst. Vakeela was not conducted on the request of the legal heirs of the deceased but the death certificate issued on 19.11.2022,

prima-facie, suggests that the deceased lady suffered injuries on her head and died later on, which was a cognizable offense committed by the applicant and punishable under Section 302/337-A (i) PPC, therefore, the applicant is not entitled to the concession of extraordinary relief. Learned counsel for the complainant has supported the impugned order dated 20.12.2022 and prayed for the dismissal of the pre-arrest bail application of the applicant Muhammad Ashraf. Learned counsel also pointed out that the case of the applicant Waqar @ Wakko, Hamza, and Shan @ Bara Shan in B. A No.982/2023 is similar, therefore, their post-arrest bail application is also liable to be dismissed.

4. The overall stance of the complainant has been refuted by the applicants in B. A No.982/2023 on the ground that they are in jail since their date of arrest. He emphasized that ocular evidence differs from medical evidence and the prosecution has made dishonest improvements in its case. Learned counsel further argued that the cause of death is still undetermined though six months have been lapsed. He further pointed out that both the parties are neighbors and since the issue over the house was involved, as such the false implication of the applicants by the complainant cannot be ruled out. He next argued that there is a delay of three days for lodgment of the FIR which has not been explained and there is no direct evidence or motive of the accused to cause any injury to the deceased lady. He prayed for allowing both bail applications i.e. post-arrest and pre-arrest.

5. I have heard the learned counsel for the parties on the aforesaid bail applications and perused the record with their assistance.

6. The main allegations against all the applicants are that they caused stone injury on the head of Mst. Vakeela who died later on. However, her postmortem was not conducted at the request of the legal heirs of the deceased and the cause of death remained undetermined.

7. The Supreme Court in similar circumstances has held that The perception and discernment of the expression "further inquiry" is a question that must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt concerning the

involvement of accused in the crime. The raison d'etre of setting the law into motion in criminal cases is to make an accused face the trial and not to punish an under-trial prisoner or let him rot behind bars. It is a well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether the accused is entitled to bail or not which is not a static law but growing all the time, molding itself according to the exigencies of the time. To ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted, and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question of whether or not there exist reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum.

8. Primarily, in making out a prima-facie case for the grant of pre-arrest bail, the accused has to show some mala fide on the part of the complainant and the investigating agency, motivated by caprice and ulterior motive to humiliate and disgrace the accused person in case of arrest, however, at bail stage, except in very rare cases, it is difficult for an accused person to furnish tangible proof about the element of mala fide or foul play on the part of the complainant or the arresting agencies, therefore the Court has to look at the material available on record and draw inferences therefrom about the mala fide or ulterior motive on account of which the intended arrest of the accused is motivated.

9. The guiding principle on the subject point is that while deciding bail petitions only a tentative assessment of the material and facts available on record is to be made and deeper appreciation of the same shall be avoided and that any fact which may not be sufficient to cast doubt of absolute nature on

the prosecution case, but equally sufficient to be considered for grant of bail, cannot be lightly ignored.

10. I have cautiously scanned and ruminated the material placed on record and reached a tentative assessment that whether it is a case of premeditated murder or simple Qatal- b-Sabab, this can only be resolved and determined by the trial court after a full-fledged trial of the case but keeping in view the present set of circumstances, the case of all applicants requires further inquiry.

11. The ad-interim pre-arrest bail already granted by this Court on 26.12.2022 to applicant Muhammad Ashraf is hereby confirmed on the same terms.

12. So far as the post-arrest bail of the applicants Waqar alias Wakko son of Aslam, Hamza son of Aslam, and Shan alias Bara Shan son of Ramzan is concerned, their bail plea is accepted subject to furnishing their solvent surety in the sum of Rs.100, 000/- (Rupees one hundred thousand only) each and PR bond in the like amount to the satisfaction of the trial Court.

12. It is emphasized that the observations made by this Court are tentative and shall not prejudice the case of either party before the Trial Court. The applicants are directed to regularly appear in the Trial Court. In case they misuse the concession of bail, the learned Trial Court will be at liberty to cancel the bail without reference to this Court.

13. These are the reasons for my short order dated 04.7.2023 whereby the aforesaid bail applications were accepted and disposed of.

JUDGE

SHAHZAD SOOMRO