

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1755 of 2023

Date	Order with signature of Judge
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For hearing of bail application

20.09.2023

Mr. Ajab Khan Khattak advocate for the applicant
Syed Meeral Shah Addl. P.G along with IO/SI Sohail Ahmed of P.S
Surjani

The applicant Matloob Ahmed seeks indulgence of this Court against the order dated 20.07.2023 passed by Additional Sessions Judge VII (West) Karachi in Bail Application No. 2557/2023, whereby he was denied post-arrest bail in F.I.R No.485/2023, registered under Sections 302/34 PPC at Police Station Surjani Town, Karachi, on the premise that applicant in connivance with accomplices killed the brother of the complainant by administering pills/drugs then applied pressure to the neck then hanged the deceased.

2. The Prosecution story as narrated by the complainant in the F.I.R. is that on 21.05.2023 he was informed by his sister that brother Sohail Ahmed had committed suicide. As per the complainant, he was rushed to the house of his brother situated at Khuda ki basti Surjani Town, where he saw marks around the neck of the deceased. He has strong suspicion against his sister-in-law who in connivance with landlord Kamran murdered his brother. Such report of the incident was reported to the police on the same day, who registered FIR No. 485 of 2023 under Section 302 / 34 PPC.

3. At the very outset, Mr. Ajab Khan Khattak learned counsel for the applicant has argued that the applicant has falsely been roped in this case against the facts and circumstances. It is further stated that admittedly name of the applicant/accused is not mentioned in the FIR, there is no eye witness that the caption case is one of suicide case and the prosecution is malafide dragging the applicant/accused in a heinous offence the case is fall within the ambit of further inquiry. It is further stated that the applicant/accused is not required in any other case. It is further stated that the prosecution miserably failed to associate any single independent witness, while the alleged place of incident is a highly thickly populated area, which is a violation of Section 103 Cr.P.C. It is further stated in such

cases the grant of bail is a matter of right of the applicant/accused. Learned counsel further submitted that the co-accused Mst. Mahjabeen wife of the deceased was severely tortured by her in-laws and police who brought her before the Magistrate for recording her statement under Section 164 Cr. P.C. where she denied the allegations compelling the learned Magistrate to remand her to judicial custody. Learned counsel further submitted that as per the post-mortem report dated 21.05.2023 the cause of death of the deceased occurred due to asphyxia leading to cardiorespiratory arrest resulting in constriction to the structure of the neck. Learned counsel also referred to the sample analysis report dated 26.08.2023 whereby the doctors found tresses of alcohol only. Per learned counsel there is no evidence of the applicant to have administered the pills to the deceased to cause his death; therefore the applicant cannot be saddled with the criminal liability. He has further submitted that there is no connection between the applicant and the wife of the deceased however he has only been roped in merely on suspicion that the applicant brought the pills and handed over the same to the co-accused who allegedly administered him, which factum needs corporation and requires further inquiry. He prayed for allowing the bail application.

4. Syed Meeral Shah Addl. P.G. has submitted that the complainant has been served by SI Sohail Ahmed of P.S Surjani Town however he has chosen to remain absent and on his behalf learned Addl. P.G. has opposed the bail application and contended that this is a simple case of culpable homicide and submitted that the complainant has made very specific allegations against the applicant who in connivance with the co-accused murdered the deceased Sohail Ahmed. Learned APG has submitted that during investigation the applicant has admitted his guilt in the present case. He further argued that the case of the prosecution is supported by the medical evidence as well as the statement of the PW and there is no sufficient incriminating material available on the record to connect the applicant to the subject crime. He further argued that the maximum punishment for the offense under section 302 PPC is life imprisonment or death which comes in the prohibitory clause of Section 497(2) Cr.P.C. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. Tentative assessment of the record reflects the following aspects of the case, which prima facie determine the fate of the present bail application:-

- a) *the alleged offense occurred on 21.05.2023 and was reported on the same day.*
- b) *the allegations against the applicant are that he helped the co-accused to kill her husband by bringing the pills that were allegedly administered to the deceased Sohail Ahmed and thereafter he was hanged.*
- c) *the prosecution recorded the statement of PW and collected a post-mortem report of the deceased, which shows that the cause of death was asphyxia leading to cardiorespiratory arrest.*
- d) *sample analysis report dated 26.08.2023 suggest the following aspects:-*
 - i. *Ethly alcohol 43.228 mg% is detected in article No.04*
 - ii. *Metabolites produced during oxidation of alcohol such as pyridine carboxaldehyde (2-piperidone/CYP2E1/N Founylpyrolidine) are detected in Article No. 04 & composite of articles No. 01 & 02.*
 - iii. *Traces of ethanol detected in a composite of articles No. 01 & 2.*
 - iv. *No traces of any sedative, narcotic, psychotic, or poisonous substances are found infree from state in articles No. 01, 02 & 04.*
 - v. *No above-mentioned compounds are detected in article No. 03.*
- e) *the prosecution attempted to bring the co-accused Mst. Mahjabeen w/o the deceased before the Magistrate for recording her confession, however, she denied the suggestions and put the burden upon her inlaws and the police.*
- f) *prima facie no eye witness of the incident has been cited who might have seen the alleged offense.*

7. The offense with which the applicant stands charged for Section 302 PPC is yet to be determined by the trial Court. In the circumstances and because of the dicta laid down by the Supreme Court in the case of *Tanveer v. The State (PLD 2017 SC 733)*, the case against the applicant needs to be looked into by the trial Court on the allegations leveled against him by the prosecution as prima facie the entire case of the applicant is based on hearsay evidence as no eyewitness has been cited in the case who might have seen the alleged offense occurred at the hands of the applicant.

8. I have cautiously scanned and ruminated the material placed on record and reached a tentative assessment that whether it is a case of suicide or murder, 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 the applicant requires further inquiry in terms of Section 497(2) Cr.P.C.

9. The grounds agitated by the learned Addl. P.G cannot be assessed at the bail stage without recording the evidence in the matter as such the applicant has made a case of post-arrest bail in the aforesaid crime at this stage for the simple reason that medical evidence coupled with a sample analysis report dated 26.08.2023 and other material collected during investigation prima facie makes the case of the applicant of further probe as till date no incriminating material has been brought on record to connect the applicant with the alleged crime.

10. For the foregoing reasons, the applicant is admitted to post-arrest bail in the aforesaid crime on furnishing solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) with PR bond in the like amount to the satisfaction of the trial Court. The trial Court shall endeavor for early disposal of the case within four months and such compliance shall be made through MIT-II of this Court.

11. Needless to mention that the observations made in this order are of tentative nature which shall not in any manner influence the trial Court and that this concession of bail may be canceled, under Section 497(5) Cr. P.C., if the applicant misuses it in any manner, including causing a delay in the expeditious conclusion of the trial.

12. This instant Criminal Bail Application stands disposed of.

JUDGE