

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.651 of 2023

Date	Order with signature of Judge
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For hearing of bail application

4.7.2023

Mr. Muhammad Iqbal, advocate for the applicant.
Mr. Muntazir Mehdi, APG.

ORDER

ADNAN-UL-KARIM MEMON,J:-This is a post-arrest bail application filed by the applicant Wali Shah in Crime No. 68 of 2022 for offenses under sections 201/ 202/ 302/ 114 and 34 PPC registered at Police Station Maripur/Jackson Karachi. His earlier bail plea was discarded by the trial Court vide order dated 11.03.2023 on the premise that he was/is nominated in FIR with the specific role of wrapping up the dead body of the deceased lady in the blanket and discarding by setting the body on fire thereafter buried the body in a ditch. Such a report of the incident was lodged on 01.05.2022 under the complaint of SI Muhammad Nadeem Akbar of PS Jackson. The applicant was arrested in the aforesaid crime, who during interrogation admitted his guilt and on his pointation dead body was recovered.

2. Mr. Muhammad Iqbal, advocate has mainly contended that co-accused Wali Muhammad son of Shoukat Ali has been allowed post-arrest bail by the trial Court vide order dated 06.08.2022 as such the applicant is entitled to the concession of bail under the rule of consistency. He further contended that allegations against the applicant are yet to be proved as the FIR of such an incident is delayed by four months. He further contended that the applicant has booked in this case without any iota of evidence as there was/ is no eye witness of the alleged incident who might have seen the incident. Per learned counsel the applicant has nothing to do with the alleged kidnapping and killing of the deceased unknown lady. He prayed for allowing the instant bail application.

3. Learned APG has opposed the bail and supported the reasoning put forward by the learned trial Court while disposing of the bail application of the applicant vide order dated 11.03.2023. Learned APG further submitted that the prosecution case falls within the ambit of Article 40 Qanun-e-Shahadat Order, 1984, and corroborative evidence i.e. recovery of the dead body, and medical evidence has successfully proved the charge against the accused.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. Tentative assessment of the record reflects that the alleged incident took place four months before the date of the report at Police Station Jackson. The inquest report was prepared by the police on 01.05.2022 which prima-facie discloses some bones of the human body.

6. The statement of Umar Rohan was also recorded who did disclose that on 20.11.2021 his wife Zar Sanga Bibi was kidnapped by accused Shareef Khan son of Shireen Khan and he lodged FIR No 1067 of 2021 under section 496-A PPC of her kidnapping on 30.11.2022 at Police Station Pir Abad and subsequently identified the belonging of his wife Zar Sanga Bibi.

7. DNA report was also obtained by police and her parentage with Wajid Khan Son Umar Ro Khan came positive vide DNA report dated 30.05.2022.

8. The police only collected the evidence against the applicant to the effect that he disclosed in his interrogation report that he committed the alleged crime in connivance with his accomplices.

9. Prima-facie the entire story of the prosecution depends upon the statement of the accused person made during interrogation. The co-accused Wali Muhammad son of Shoukat Ali has been allowed bail by the trial Court vide order dated 6.8.2020. Police have failed to arrest the accused who allegedly brought the girl to Farmhouse Hut on 15.4.2022.

10. Prima-facie, no eye witness of the alleged incident has been cited to corroborate the story of the prosecution. Only some bones of the body have been recovered and it is yet to ascertain whether the applicant facilitated the crime or the alleged lady was already dead when the applicant came to the spot and alleged traces of burning of the body have to be ascertained by the trial court.

11. Prima-facie the allegations against the applicant are to dispose of the dead body and it is yet to be seen whether Section 201 and 202 PPC are attracted in the aforesaid circumstances or otherwise. The punishment for the aforesaid sections is around seven years and does not fall within the prohibition of section 497(1) CR.PC.

12. From the above facts and circumstances of the case, I am of the tentative view that the police has to prove the allegations against the applicant about his involvement in crime No.68/2022 of Police Station Maripur / Jackson on the premise that the alleged incident took place four 04 months before the date of the report i.e. 01.05.2022, besides, the dead body of deceased was brought by co-accused and the only role which has been assigned to the applicant that he wrapped up the body in blanket threw it out in a ditch just to attract section 201 and 202 of PPC and it is for the trial court to determine the innocence and guilt of the applicant after recording the evidence of the SI Muhammad Nadeem and one Umar Cohan claiming to be the husband of deceased lady Mst. tar Sanga Bihi was allegedly kidnapped by co-accused Shareef Khan, who allegedly identified certain belongings of the deceased lady. These all facts require further inquiry in terms of section 497(2) Cr.P.C.

13. The applicant has made out a case for post-arrest bail in Crime No.68/2022 of P.S Maripur subject to furnishing solvent surety in the sum of Rs.200,000/- and P.R bond in the like amount to the satisfaction of the learned trial Court.

14. The observations recorded hereinabove are tentative and shall not prejudice the case of the parties at trial. However learned trial Court is directed to record the statement of SI

Muhammad Nadeem / complainant within one (01) month and submit the report to this Court through MIT-II positively.

15. Bail Application stands disposed of.

JUDGE