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**IN THE HIGH COURT OF SINDH AT
KARACHI**

Cr. Bail Application No. 892 /2023

SANAULLAH @ SUNNY,
Son of M Gul
Muslim, Adult, Presently
Confined in Judicial Custody,
Karachi.....**APPLICANT/ACCUSED**

PRESENTED ON
09.03.2023

Deputy Registrar (Judg.)

09.03.23
26.10.

VERSUS

1550

The State.....**RESPONDENT**

FIR No. 326/ 2018
U/s 302 PPC
P.S. JACKSON

**BAIL APPLICATION UNDER SECTION
497 CR.P.C.**

Being aggrieved and dissatisfied with the impugned order dated 09.03.2023, passed by learned XIth Additional District Sessions Judge, at Karachi West, whereby rejected the Bail Application bearing No. 771/2023, hence it is most respectfully prayed on behalf of the above named Applicant / Accused that this Honourable Court may very graciously be pleased to enlarge/admit the applicant/accused on bail, on the consideration of following facts & grounds:-

(Certified copy of Order dated 09.03.2023 is attached herewith and marked as annexure "A")

Continued.

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.692 of 2023

Date	Order with signature of Judge
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For hearing of bail application

11.7.2023

Mr. Umar Farooq Khan, advocate for the applicant.
Mr. Aswad Ali Chauhan advocate for the complainant.
Mr. Siraj Ali Khan, Additional PG.

Through this bail application, the applicant Sanauallah alias Sunny seeks post-arrest bail in Crime No.326/2018, registered under Section 302 PPC at PS Jackson. Applicant earlier filed Bail Application bearing No.771/2023, which was dismissed by the learned XI-Additional District & Sessions Judge Karachi West, hence this bail application.

2. The accusation against the applicant in terms of FIR is that his cousin Muhammad Shah had been shot dead by an unknown person at Railway Colony on receiving such information complainant lodged FIR against the applicant on the premise that he came to know later on through his friend that the applicant had shot the deceased dead. The police conducted the investigation and arrested the applicant after a considerable period and subsequently challaned him in the Court of law.

3. Learned counsel for the applicant has submitted that there is no eye witness of the incident and no recovery of the alleged crime weapon has been effected from the site of occurrence besides there is no direct or indirect evidence available against the applicant, merely naming the applicant in the F.I.R is no justification to book the applicant in the heinous crime of murder, therefore applicant is entitled to the concession of post-arrest bail.

4. Learned APG assisted by learned counsel for the complainant has opposed the bail application on the ground that he is involved in the murder of the deceased with a specific role therefore, he is not entitled to the concession of bail. Learned counsel for the complainant has relied upon the case Ahmed Meer Alia (Huda) and two others v. The State 2017 P.Cr.L.J Note 149, Said Muhammad v. Muhammad Sirajuddin and others 2014 MLD 437 and Sadullah v. The State 2016 P.Cr.L.J 1793 and argued

that the applicant's unexplained abscondance could be considered as a corroborative piece of evidence which shows his involvement in the present case. He further argued that in case of abscondance, recovery of the crime weapon was not possible as such no reasonable ground existed in favor of the applicant to admit him to bail therefore his bail application is liable to be dismissed.

5. I have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. Tentative assessment of record reflects the following aspects of the case:-

- i. The FIR was lodged on 04.10.2018 and the matter was reported to the police on 05.10.2018 after a delay of one day.
- ii. Complainant narrated the story in the FIR that he was informed by his friend that the applicant fired upon his cousin Muhammad Shah which factum prima-facie shows that he is not an eyewitness of the incident.
- iii. Applicant was not arrested from the spot.
- iv. No recovery has been affected from him after his arrest.
- v. The opinion of the Forensic Division suggests that one 9 mm bore crime empty was not matched with the available data based on this division.
- vi. The statement of Muhammad Yousuf prima-facie shows that he was not the eyewitness of the incident. Besides, he has not disclosed whether any blood-stained dust and one empty was secured by police from the place of the incident.
- vii. The statement of PWs who alleged to have disclosed the name of the applicant needs to be looked into by the trial Court whether their statement is corroborated with material evidence.
- viii. In the FIR the complainant claimed that the applicant fired upon the deceased but his information to such extent was based upon the information passed to him by someone and the statement of Muhammad Yousuf was silent regarding the source through which he came to know about the involvement of the accused in the present case, and it is yet to be ascertained whether the applicant is involved in the alleged offense as portrayed by the complainant and it is for the trial Court to record the evidence of the complainant to ascertain the actual cause of

death of the deceased as the statement of the complainant and Muhammad Yousuf are required to be corroborated with material evidence.

ix. It is a settled principle of law that mere abscondence is no conclusive proof of the guilt of the accused.

7. The pith and substance of the FIR demonstrate that the complainant reached the scene of the crime when which explicates that complainant was not the eye-witness of the incident but was informed by the witness who was also allegedly not present at the scene of the offense. It is a well-settled exposition of law that at the bail stage deeper appreciation of evidence couldn't be made out but the court has to get the picture through a tentative assessment of the prosecution story. however, to reach even a tentative assessment, whether the applicant has made out a case of a further inquiry or not, the court has to glean and congregate the composite effect of incriminating material brought on record by the prosecution, inconsistency or contradiction if any in the statements vis-à-vis medical report and forensic laboratory report of crime empty.

8. The insight and astuteness of further inquiry is a question that must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt concerning the involvement of the accused in the crime.

9. It is well settled that object of the trial is to make an accused face the trial and not to punish an under-trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar.

10. Every accused is innocent until his guilt is proved and the benefit of the doubt can be extended to the accused even at the bail stage if the facts of the case so warrant. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), wherein it has been held that at the bail stage, the court is not to make a deeper examination and appreciation of the evidence collected during the investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. 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.

The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused. On the aforesaid proposition, I am guided by the recent decision of the Supreme Court in the case of Resham Khan Vs. The State 2021 SCMR 211.

11. 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. In principle in a case under Section 302 PPC that single circumstance of doubt is sufficient to make the case doubtful. Reference in this regard is placed in the case of Tariq Pervez v. The State 1995 SCMR 1345 and Ghulam Qadir and 2 others v. The State 2008 SCMR 1221. For the benefit of the doubt to an accused, more than one infirmity is not required. Single infirmity creates reasonable doubt in the mind of a reasonable and prudent person regarding the truth of the charge and makes the whole case doubtful. A mere accusation of an offense would not be sufficient to disentitle an accused from being bailed out. There should be "reasonable grounds" as distinguished from mere allegations or suspicion.

12. On perusal of the record and tentative assessment of the material available as well as the ratio of the case-laws discussed supra, it appears to be a case of reasonable doubt and further inquiry.

13. Adverting to the ground of abscondence, I have noted that the learned trial Court has refused the bail of the applicant on the ground of his long abscondence but mere abscondence by itself is not sufficient to withhold the concession of bail when he otherwise became entitled to the grant of bail on merit. On the aforesaid proposition, I am guided by the decision rendered by the Supreme Court in the case of Hidayat Khan Vs. The State 2023 SCMR 172.

14. I have cautiously scanned and ruminated the material placed on record and in my tentative assessment, that there are sufficient grounds for further inquiry in terms of Section 497 (2) of Cr. P.C. therefore, on 11.07.2023, for the reasons to be recorded later, this bail application was allowed and the applicant namely Sanaullah @ Sunny son of M. Gul was admitted to post-arrest bail in FIR No.326/2018 under Section 302 PPC registered at Police Station Jackson, District Kemari subject to furnishing

solvent surety in the sum of Rs.200,000/- and PR bond to the like amount to the satisfaction of learned trial Court.

15. The learned trial Court is directed to record evidence of the material witnesses within a reasonable time and conclude the same.

16. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at the trial.

17. The aforesaid are the reasons for my short order dated 11.07.2023 whereby the instant bail application was allowed.

Shehzad Saad

JUDGE
17/7