

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 735 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Naseerullah alias Haji Babar son of Siraj Ahmed	: through Mr. Saifullah, Advocate
The State	: Through Mr. Mumtaz Ali Shah, Assistant Prosecutor General, Sindh a/w I.O/SIP Haroon Rasheed of P.S Zaman Town, Karachi.
Complainant Abid Hussain son of Muhammad Hussain	: through Mr. Ghulam Hasnain, Advocate
Date of hearing	: 19.09.2024
Date of order	: 19.09.2024

ORDER

Muhammad Saleem Jessar, J:- Applicant Naseerullah alias Haji Babar stands booked under Crime No.1018 of 2023 registered with P.S Zaman Town, Karachi, for the offence punishable to Sections 302, 396 & 34 PPC. By way of instant bail application, he seeks his release on post arrest bail. The case has been challaned which is now pending for trial before the Court of Addl. Sessions Judge, XIII, Karachi (East) vide Sessions Case No.4170 of 2023 (re-the State Versus Imran and others). The applicant preferred his bail plea before the trial Court which by means of order dated 15.03.2024 was declined. Hence, instant bail application has been maintained.

2. On 07.09.2023, complainant Abid Hussain got registered instant case with P.S Zaman Town, Karachi, stating therein that his father Muhammad Hussain and younger brother Asad Abbas who run a shop namely Prince Book Depot situated in Korangi No.2. On 06.09.2023 his father and brother

along with his employees was present at the book shop when at about 2250 hours four accused came in their shop who were duly armed with, whilst snatching cash from them, a resistance was offered by his father and brother, the accused by making fires upon them, caused injuries to them and then decamped from the scene. The injured were shifted to Indus Hospital where they succumbed to injuries. After completion of legal formalities, he received dead bodies and then got instant case registered. On the night falling between 21.09.2023 at about 0135 hours, a police encounter took place in which one Imran son of Karamat Ali was apprehended on the spot along with offensive weapon; whereas, one of the culprit namely Ahsan Gul alias Target died on the spot. Such FIR bearing No.1082 of 2023 under Section 353, 324, 186 & 34 PPC as well as FIRs No. 1083 and 1084 of 2023 under Section 23(i) A of Sindh Arms Act, were registered against them. During interrogation, co-accused Imran disclosed that on 06.09.2023 he along with his companions namely Ahsan Gul alias Target son of Ibrahim (since died), Naseerullah alias Haji Babar son of Siraj Ahmed (present applicant), Umair son of unknown and one unknown boy had snatched cash from the book shop owners and after making fires had decamped from the scene. He further disclosed that in the evening of 07.09.2023 applicant Naseerullah alias Haji Babar had committed robbery and during such scuffle his companion Attiq-ur-Rehman was killed. During investigation, it was brought into the knowledge of the I.O that during firing accused had snatched cash amount of Rs.600,000/- from the book shop owners, therefore, Section 396 PPC was added.

3. Learned counsel for the applicant argued that accused at the time of incident, had sustained a fire arm injury on his vital part and his right hand was fractured due to which he has been admitted in jail hospital in serious condition where the doctor has advised him to be shifted to a private hospital for proper medical treatment as the same is not available inside the jail. Learned counsel further submitted that name of the applicant did not find place in the FIR; besides, he was implicated by the police on a statement of co-accused Imran, which is yet to be evaluated at the time of trial. He next submitted that nothing incriminating has been shown to have been recovered from his possession or produced by him during investigation. Therefore, case against applicant requires further inquiry,

hence, he may be enlarged on bail. In support of his contention, learned counsel placed reliance upon the cases of (i) *MUHAMMAD ARIF Versus THE STATE* (1997 SCMR 462), (ii) *NAVEED SATTAR Versus The STATE* (2024 SCMR 205), (iii) *MUHAMMAD RAFIQUE Versus THE STATE* (1997 SCMR 412), (iv) *JAMAL-UD-DIN alias ZUBAIR KHAN Versus THE STATE* (2012 SCMR 573) and (v) *ZAIGHAM ASHRAF Versus The STATE and others* (2016 SCMR 18).

4. On the other hand, learned Assistant P.G, Sindh appearing for the State, assisted by the I.O, opposed the bail application on the ground that it is a case of robbery with double murder and the accused was implicated by the PWs in their respective 161 Cr.P.C statements; besides, accused was captured by the CCTV camera and its USB was secured by the I.O/SIP Haroon Rasheed. The photographs taken from the USB being footages of the CCTV camera depicts the applicant to be one of the outlaws who had committed robbery as well as murder of two innocent citizens. The offence with which applicant stands charged, carries capital punishment, therefore, in such like cases, bail cannot be granted as a matter of routine. Learned Assistant P.G further submitted that case has been proceeded where complainant Abid Hussain as well as eye-witness Muhammad Sohail have been examined; whereas, one of the eye-witnesses namely Muhammad Saad as well as official witnesses are remained to be examined, therefore, trial against him has been proceeded; hence, question of delay in its conclusion, as claimed, does not arise. In support of his contention, learned Assistant P.G placed reliance upon the cases of (i) *SHAH MUHAMMAD and another Versus THE STATE* (1996 SCMR 981), (ii) *LAL MUHAMMAD Versus THE STATE* (1990 SCMR 315) and (iii) *GHALAM AHMED CHISHTI Versus The STATE and another* (2013 SCMR 385).

5. Learned counsel for the complainant also opposed the bail application and submitted that per report submitted by the Registrar of this Court, the USB collected by the I.O during investigation, was sent to Forensic Laboratory wherefrom it has been returned with positive result, therefore, presence of the accused has been established; hence, he is not entitled for the bail more particularly when the offence with which he stands charged, involves with capital punishment. He also filed

photographs of the accused under the cover of his statement dated 19.09.2024, which were taken on record.

6. **Heard and perused record.** Per report submitted by the Registrar of this Court, the USB returned by the Forensic Lab, was displayed in I.T Department of this Court in presence of the I.O who specifically and categorically recognized the accused to be offender of the present crime. Subsequently, accused repeated the crime of like nature where he was captured in injured condition whilst his companion was killed. Therefore, the conduct of accused shows that he is not only habitual but a hardened, desperate and dangerous criminal who after committing murder of two innocent citizens had again committed/repeated the crime which is most serious option, therefore, question of his false implication is not much of consequence. As far as, arguments advanced by learned counsel for the applicant that accused is innocent and in view of the evidence collected by the I.O, he is entitled for the bail, is concerned, it is settled principle of law that once the trial commences particularly in an offence which involves with capital punishment, bail cannot be granted frequently until and unless any concrete material or tangible evidence is brought on record. In instant case, accused has repeated the crime of same nature which is sufficient to hold that he is a dangerous and desperate for the society. It is also settled principle of criminal administration of justice system that a tentative assessment of the facts and circumstances ought to be undertaken for the purpose of disposal of the bail application and deeper appreciation of the same has not been appreciated by the superior Courts. In instant case, the accused whilst committing robbery had committed murder of two innocent citizens; besides, he was also apprehended in an other crime on the spot in injured condition, therefore, question of mistaken identity or false implication, does not arise. The law relied upon by learned counsel for the applicant has no relevancy as it is distinguishable from the facts and circumstances of present case.

7. The upshot of above discussion is that applicant has failed to make out a good prima facie case for his bail during pendency of the trial. Consequently, instant bail application being devoid of its merit, is hereby dismissed.

8. Since, the trial has commenced and many of the prosecution witnesses have been examined, therefore, it is expected that trial Court shall conclude the trial within shortest possible time, under intimation to this Court through MIT-II. Meanwhile, prosecution is also directed to ensure procurement of its witnesses before the trial Court on each and every date so that it could be concluded within no time.

JUDGE

Zulfiqar/P.A