

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application No.S-06 of 2024

1. For orders on O/objection at flag-A.
2. For hearing of bail application.

Date of hearing **23.02.2024.**

Syed Murad Ali Shah, Advocate for applicant.

Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for State.

ORDER

ZULFIQAR ALI SANGI, J; Through this bail application the applicant Khair Muhammad son of Kamal Khan Lashari seeks post-arrest bail in Crime No.25/2020 Police Station, Khuhra for offences punishable under Sections 302, 147, 148, 149 PPC. Earlier his bail application was declined by Additional Sessions Judge-/(MCTC), Khairpur vide order dated 17.11.2022.

2. Facts of the case are that complainant Mst. Shumaila, on 19.04.2020 at 6:30 p.m, lodged the FIR alleging therein that there was a dispute between father of the complainant, namely, Muhammad Ali (deceased) and Khair Muhammad Lashari. On 15.04.2020 at 07:00 p.m, when the complainant alongwith her father, brother Naveed and brother-in-law Muhammad Khan were going from Khuhra to village Redhar on two motorcycles, they were intercepted by accused Khair Muhammad Lashari and eight other co-accused, thereafter, accused Hubdar Ali and Gada Hussain tethered the complainant's father with rob and then accused Ameer Hussain inflicted hatchet blow on his head, resultantly blood started oozing. Accused Hubdar Ali caused lathi blows, accused Ghulam Murtaza sprinkled petrol on him and accused Khair Muhammad set him on fire. The cries raised by the complainant party attracted to village people, who rushed there, whom seeing coming the accused persons fled away. The complainant party took the injured to Govt. Hospital, Gambat and then lodged the FIR. Later, on 19.04.2020, the injured shifted to Burns Centre, Civil Hospital Karachi where he died on 20.04.2020.

3. Learned Counsel for the applicant contended that applicant is innocent and he has falsely been implicated by the complainant with malafide intention and ulterior motives due to enmity; that there is un-explained delay of four days in lodging of FIR; that there is no independent witness of the incident; that there is an admitted enmity between the parties on the landed property; that the allegations against the applicant are absurd and baseless and no reasonable grounds exists to believe that he has committed the alleged offence, as such, he is entitled for the concession of bail on the ground of further inquiry; that co-accused Ameer Hussain, Ghulam Nabi and Gada Hussain have already been granted bail by this Court hence, rule of parity is applicable to the case of present applicant. Under these circumstances he prayed for grant of bail.

4. As against, Mr. Shafi Muhammad Mahar, learned Deputy Prosecutor General vehemently opposed the bail plea and supported the impugned order passed by learned Additional Sessions Judge-I /(MCTC), Khairpur. He contended that specific role of setting fire upon deceased is attributed against present applicant. Delay is well explained by the complainant in his FIR as injured was referred to Karachi hospital. Indeed, on merits, the applicant is not entitled for grant of bail as he set fire upon deceased Muhammad Ali later on he lost his life which act apparently on face of it is heinous one. Lastly, he prayed for dismissal of bail of accused.

5. Complainant though served but none has appeared on her behalf.

6. Heard Counsel for parties and have gone through the record with their able assistance.

7. Perusal of record reflects that name of present applicant/accused appeared in the FIR with specific role of setting fire upon the deceased after sprinkling petrol by co-accused Ghulam Murtaza and later on he died in the hospital. The applicant actively participated in the commission of offence alongwith his other accomplices resulting deceased lost his life. The PWs have fully supported the version of

complainant which is further corroborated by the MLC issued by the medical officer, the cause of death shown in MLC as Cardio Pulmonary arrest due to fire burn which allegation is against the applicant. The offence for which the applicant/accused has been charged carried punishment up to death and the same falls within the prohibitory clause of Section 497(2) Cr.P.C. The Supreme Court in the case of ***Ghulam Qammer Shah vs. Mukhtiar Hussain and others reported in (PLD 2015 Supreme Court 66)***, has cancelled the bail granted by the High Court by observing as under:-

“On merits of the case we have noticed that respondent No.1 was attributed a specific firearm injury on the neck of Zahid Hussain who has so far stood by his allegation against the respondent in that respect and he is prima facie supported by the medical evidence. In these circumstances it could not be said that the case against respondent No.1 called for further inquiry into his guilt for the purposes of releasing on post-arrest bail.”

8. It further appears that case of co-accused namely Ameer Hussain, Ghulam Nabi and Gada Hussain who were admitted to post-arrest bail by this Court, is on different footings and the role of present applicant is that he set on fire upon deceased Muhammad Ali, later on who died in the hospital. Under these circumstances rule of consistency would not be available to applicant. It is settled law that bail application(s) are to be decided tentatively without going in to the merits in deep. From the tentative assessment of the material available on record I am of the view that there appear reasonable grounds for believing that the applicant is involved in the case where one innocent person has lost his life. Result; thereof this bail application is ***dismissed***.

9. Needless to mentioned here that the observations made hereinabove are tentative in nature and shall not cause prejudice to the right of either party at trial.

J U D G E

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