

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2053 of 2024

Date

Order with signature of Judge

For hearing of bail application

Date of hearing and order:- 21.10.2024

Mr. Hussain Bux Saryo advocate for the applicant.

Mr. Muntazir S. Mehdi along with Orangzeb SHO Sachal and Abdul Ghafoor ASI of PS Sachal.

ORDER

Adnan-ul-Karim Memon J, The applicant Saqlain Abbas alias Ayan seeks post-arrest bail in FIR No. 1098 of 2023 in Sachal Police Station, Karachi. His previous bail application was rejected by the Additional Sessions Judge-V Malir Karachi on the premise that the applicant was/is involved in human trafficking by selling a woman for prostitution; that there was/is no evidence to suggest the applicant was/is falsely implicated; that the applicant's admission of guilt and the evidence presented by the prosecution supported the charges.

2. On 27.9.2023, ASI Abdul Ghafoor of PS Sachal received information about a dead body lying at Amrooha Society near Al-Azhar Garden Scheme No. 33, Malir Karachi. He conducted proceedings under section 174 Cr. P.C of the dead body of an unknown lady aged about 20/22 years and lodged such F.I.R No.1098 of 2023 under section 302 PPC. He also issued a letter to WMLO for issuance cause of death certificate as well as sent the sample for chemical and DNA, after completion of the investigation submitted a challan in the case under sections 322,201,202,371-A/34 PPC against the applicant and other accused.

3. Learned counsel argues for the applicant's innocence. He claims that the applicant was falsely implicated based on a co-accused's statement about running the brothel. He emphasizes the inadmissibility of the co-accused's extrajudicial confession under Qanun-e-Shahadat. The counsel highlights the lack of evidence against the applicant, including no nomination in FIR or arrest at the scene on such allegations. He also points to the absence of violence on the victim's body at the hands of applicant. He submitted that the rule of consistency in bail matters is attracted as

co-accused has been granted bail by this court vide order dated 22.7.2024 in bail application No.959 of 2024. Finally, he requests bail for the applicant on the premise that no medical as well as DNA matched with the applicant.

4. Learned APG assisted by the complainant has opposed the grant of bail of the applicant/accused. It is argued that sufficient material is available on record to connect the applicant/accused hence, the bail application of the applicant/accused may be dismissed in term of order passed by the trial court.

5. I have heard learned counsel for the applicant and complainant and the learned Assistant. P.G. and have also examined the material available on record.

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

“a. During the investigation, police had arrested the present applicant/accused on pointation of co-accused Aijaz, and during interrogation, the present applicant/accused had disclosed that he along with his absconding companions Azad Hussain and Ali were doing the business of prostitution and from different brothel house they booked the girls for prostitution and organized the parties at different farmhouses.

b. On 26-09-2023 his friend/co-accused Azad booked a girl namely Rabia from the brothel house of the lady accused Benish and she was dropped by the driver/co-accused Kashif at the farmhouse. The present applicant/accused further disclosed that during the party the deceased Rabia had taken intoxicant pills due to her becoming unconscious and they informed the lady co-accused Benish and her driver had taken the deceased and thereafter they came to know that she was expired.

c. In corroboration of the version of the prosecution story, the investigating officer had obtained the booking receipt of the alleged day of the incident i.e. 26-09-2023 of the said farmhouse which was booked in the name of Ahsanullah duly signed by him for 10 hours check-in time 09:00 PM to check out time 03:00 AM in the sum of Rs. 23,000/- and advance of Rs.13,000/ was paid from the account of the Ahsanullah and such paid transaction receipt of the booking is also collected by the I.O. However the present applicant is charged that on his behalf the deceased lady came at the place for committing the crime and co-accused confessed their guilt and took the name of the applicant, which the applicant admitted his guilt, as per police report but no such evidence is available in the shape of 164 Cr.P.C statement. however no DNA or any medical evidence available on record to connect the applicant in the present crime and this is for the trial court to look into the aspect of the case besides co-accused Ahsanuulah has been admitted to post-arrest bail by this court as such rule of consistency is applicable in the present case.

7. In the present case the prosecution has finally applied Section 322 PPC, though non-bailable yet is not punishable with any period of imprisonment except the payment of *Diyat*. Further Section 322, PPC falls

outside the prohibitory clause of Section 497(1), Cr.P.C. Thus, where the criminal liability of an accused of an offense is *Diyat*, in such circumstances the detention of the applicant pending trial can only be justified if his case falls within the scope of any of the exceptions stated in the cases of *Tariq Bashir v. State* **PLD 1995 SC 34**, *Muhammad Tanveer v. State* **PLD 2017 SC 733** and *Zafar Iqbal v. Muhammad Anwar* **2009 SCMR 1488**, there is, however, nothing on record that may attract any of the said exceptions and justify denial of post-arrest bail to the applicant. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Salman Khan v. The State* **2022 SCMR 515**, wherein it is held as under:-

“3. We have heard the parties and examined the record. The petitioner and others members of the Eagle Squad were on their routine duty of maintaining law and order in the city, at the time of incident. There is nothing on record to show that there was a background of any enmity between the parties, or the incident was the result of some provocation, or the petitioner fired at the car that had tinted glasses, with the intention to cause death of the complainant and his cousin. From the contents of the crime report, it appears that an offence of qatl -bis-sabab punishable under section 322, P.P.C. is made out other than qatl-i-khata punishable under section 319, P.P.C. However, qatl-i-amd under section 302 does not appear to be made out in the present facts and circumstances of the case. Section 322, P.P.C. falls outside the prohibitory clause of section 497(1), Cr.P.C. while section 319, P.P.C. is bailable. That being so, the detention of the petitioner pending trial can only be justified if this case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir, Muhammad Tanveer and Zafar Iqbal. There is, however, nothing on record that may attract any of the said exceptions and justify denial of post arrest bail to the petitioner.”

8. The medical evidence does not suggest the deceased lady was raped or any injury was found on the body of the deceased. DNA and chemical reports are on the same line and in absence of such report the applicant cannot be saddled with such offence until and unless some material is brought on record by recording evidence of the complainant and WMLO. Besides Investigating Officer has not recovered any incriminating material on the pointation of the applicant which may connect him in the present case. The aforesaid aspect can only be thrashed out after recording the evidence of the Investigating Officer as the Investigating Officer has opined that the deceased Rabia had taken intoxicant pills due to which she becomes unconscious. If this is the position of the case the trial Court has to see whether that deceased lady died due to act of the applicant or due to taking intoxicant material and this aspect can only be ascertained when the medico-legal officer examined.

09. This Court is not oblivious to the fact that unfortunately, one young lady has lost her life in the alleged accident of the present case, however, the fate of the bail application is also to be decided within the framework of Section 497 Cr.P.C. and under the guidelines on the subject laid down by the Supreme Court. Besides the above, the liability of the present applicant or charges leveled against him could only be determined

by the trial Court after recording and evaluating the evidence. It is also a settled principle of law that at the bail stage deeper appreciation of the merit of the case cannot be undertaken and only a tentative assessment of the material available is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no longer required for any investigation nor the prosecution has claimed any exceptional circumstance.

10. The trial court's observation that the applicant was/is involved in human trafficking by selling a woman for prostitution. Prima facie there is no material placed on record to suggest such an assertion, merely presuming the accused to be guilty of the offense is not sufficient to deny post-arrest bail to the accused. Besides this court granted bail to co-accused, which aspect has been discarded by the trial court deliberately without assigning any reason which is apathy on the part of trial court to ignore the command as contained in Article 203 of the Constitution as well as principle of rule of consistency. The name of the applicant was/is not included in the first Information report but was added in the challan based on statement made by co-accused. The Supreme Court has ruled that statements made by co-accused to police during the investigation are inadmissible in evidence. Even the evidence from accomplices is generally viewed with suspicion. The extent of corroboration needed depends on the specific facts and circumstances of each case. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14] and *Raja Muhammad Younas v. The State* [2013 SCMR 669].

11. The rule of consistency requires bail to be granted to an accused if it has already been granted to a co-accused under similar circumstances. In this case, this court as well as the trial court have granted bail to the co-accused based on a tentative assessment of the evidence that shows they were not present at the crime scene. Since the applicant's case is similar, the rule of consistency applies, and bail should be granted to him as well.

12. The applicant/accused Saqlain Abbas alias Ayan is granted post arrest bail because his case requires further inquiry. He is

required to provide surety in the sum of RS.2,00,000/- with one surety in the like amount and a personal bond in the same amount to the satisfaction of the trial court.

13. The observations made in this order are preliminary and do not affect the trial court's decision on the merits of the case. If the applicant/accused misuses his bail, the trial court can revoke it without referring to this court. The trial court to conclude the trial within two months without fail. The direction shall not be ignored by the trial court, at any circumstances. MIT II to seek compliance in this case without fail.

JUDGE