

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Crl. Bail Appln. No. S-62 of 2024

Applicant : Sikandar Ali Kalo, through Mr. Muhammad Aslam H. Jatoi, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Complainant : Nawab Ali Kalo,
Through Mr. Muhammad Afzal Jagirani, Advocate.

Date of hearing : 31.10.2024.
Date of Order : 31.10.2024.

ORDER

ARBAB ALI HAKRO, J.- Applicant Sikandar Ali, son of Khuda Bux, by caste Kalo, indicted in Crime No.17/2023 of P.S Fatehpur, District Larkana, for offence u/s 302, 337-J, 34, PPC, has approached this Court seeking his release on bail after dismissal of his such plea by the learned VI-Additional Sessions Judge, Larkana vide order dated 23.12.2023.

2. The prosecution case, in brief, is that on 07.09.2023, in the noontime, Shahzado, son of complainant Nawab Ali Kalo, having been called by persons, namely, 1) Saindad son of Ghulam Muhammad, 2) Sikandar, and 3) Jaaral, both son of Khuda Bux, by caste Kalo, accompanied them from his home within sight of the complainant and PWs Arbab Ali and Sahab Ali to the Otaq(outhouse) of complainant party for chitchatting and later, on the same day, at about 4.00 p.m. time, when complainant and PWs went to their Otaq, found Shahzado lying on the ground and raising cries, who on enquiry of complainant disclosed that accused Saindad, Sikandar and Jaaral due to previous annoyance have administered poison to him. He was immediately taken to Taluka Hospital, Dokri, where he passed away during treatment. After the postmortem, funeral and burial rituals of his son Shahzado, the complainant lodged an FIR on 16.09.2023.

3. Learned Counsel for the applicant contends that the applicant is innocent and has been falsely implicated in this case under suspicion; that there is a delay of 09 days in lodging of FIR without plausible explanation; that the applicant is though nominated in the FIR, however, the alleged incident of

administering poison to the deceased is undeniably unseen and unwitnessed; that the prosecution is having only last seen evidence, wherein allegation is that the applicant was one of the accused with whom the deceased had accompanied; that though per FIR the deceased had disclosed to the complainant that the accused persons had administered poison to him; however, there is no dying declaration of the deceased. He, therefore, contended that there is no iota of direct or indirect evidence to connect the applicant with the commission of the alleged offence and that the case against the applicant requires enquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. He finally prayed for a bail grant to the applicant.

4. On the other hand, learned DPG, assisted by learned Counsel for the complainant, vehemently opposed the bail application on the grounds that the name of applicant is mentioned in the FIR, that the deceased had also implicated him along with co-accused in administering poison to him; that the delay in lodgment of FIR has been explained satisfactorily; that there is sufficient material on record to connect the applicant with the commission of murder of the deceased and the offence carries capital punishment, therefore, at this stage, the applicant is not entitled to concession of bail.

5. Heard learned Counsel for the applicant and complainant, learned DPG for the State, and perused the material available on record.

6. The record reveals that the alleged incident is unwitnessed, as nobody saw the commission of the alleged crime. Even the complainant himself is not an eyewitness to the actual occurrence. According to the FIR, the incident occurred on 07.09.2023, while the complainant lodged the FIR on 16-09-2023, after a delay of nine(09) days. No doubt, a delay in lodging an FIR *per se* is no ground for granting bail. However, when there is an acknowledged history of murderous enmity between the parties, such a delay may justify a presumption that the accused has been falsely implicated after deliberation and consultation. The complainant has narrated in the FIR that on 07-09-2023, he, along with his brothers Arbab Ali and Sahib Ali and his son Shahzado(the deceased), was in the house when they heard a call outside the door. They went outside and found the present applicant/accused, Sikandar, along with Saeendad and Jaral, standing there. The said persons asked Shahzado to chat and sit in the Otaq with them. After a while, the complainant and his brothers proceeded towards the Otaq around 04:00 p.m. and found Shahzado lying on the ground. Upon inquiry, Shahzado disclosed that Sikandar, Saeendad, and

Jaral had administered poison to him due to old enmity. The complainant has admitted in the FIR that there was old enmity between his family and the accused, so it does not appeal to a prudent mind that the complainant allows his son to go alone with the accused into the Otaq. In my view, this lone factor puts the complainant's version into question in the given circumstances. Even otherwise, if the accused had a murderous intention due to previous enmity, it seems highly improbable that they would come to the complainant's house during broad hours of the day, in front of everyone and ask to have a chat with Shahzado. Moreover, according to the complainant, the deceased Shahzado disclosed that the applicant/accused had administered poison to him, but surprisingly, no dying declaration of the deceased was recorded by either the Police or Medical Officer, despite the fact that he died during treatment at the hospital. If viewed together, these factors make the case of the applicant/accused one of further enquiry falling within the ambit of Section 497(2) Cr.P.C. The case has already been challaned, and the applicant/accused has been behind bars since his arrest and is no longer required by the police for further investigation. No useful purpose would be served by keeping the applicant in jail for an indefinite period.

7. Keeping in view the above given facts and circumstances, *prima facie*, the applicant/accused has brought his case within the purview of subsection (2) of section 497 Cr.P.C. Therefore, the instant bail application was allowed by a short order dated 31.10.2024. Above are the reasons for the said short order.

8. Needless to mention, the observations made hereinabove are tentative and would not influence the trial court while deciding the case of the applicant on merits.

JUDGE