

IN THE HIGH COURT OF SINDH AT KARACHI.**Crl. Bail Application No.61 of 2016**

1. For orders on office objections
2. For hearing of Bail Application

06.04.2016

Mr. Riaz Ahmed, Advocate for applicants/accused
Mr. Abdul Haleem, Advocate for complainant
Mr. Zahoor Ahmed Shah, APG

Muhammad Iqbal Kalhoro,J. Applicants are accused in crime 279 of 2013, registered on 31.05.2013 at Police Station Sachal Karachi, U/s 302, 34 P.P.C.

2. As per contents of the FIR brother of complainant namely Ghulam Haider was security guard at Caltext Patrolpump, main University Road, Karachi, when on the day of incident viz. 31.05.2013 at 0945 hours, he was murdered by some unknown accused persons who were in black colour Toyota Corolla Car. During investigation the said Car was identified with the held of CCTV Camera installed at the patrolpump. Resultantly, the accused namely Talah Agha was arrested and allegedly he during investigation disclosed name of the present applicants at the time of incident they were also available at the rear seat of car on the offence of such statement the names of the present applicants were included in the challan and they were shown absconders. Ultimately, the applicants were arrested in Crime No. 287/2014 of Police Station, registered for the offence U/s 147, 148, 149, 506/2,337A(i), 337F(1), 376, 365-B, PPC and their arrest in the present case was also shown in November, 2015.

3. Learned counsel for the applicants has argued that there is no material available against applicants and their names have been introduced in the case on the basis of statement of co-accused, which is inadmissible under the terms of the Article 182 of Qanun-e-Shahadat Order, 1984. He further argued that no identification parade after arrest of applicants has been held to confirm their involvement in the present case. His case is that none in the statement U/s 161 Cr.P.C. of the prosecution witness, the description of applicants is not mentioned and on the basis of evidence, if the evidence of the prosecution witness is recorded, it

would be hardly prosecution established their guilt in the trial. Lastly he has relied upon the case of **RAJA MUHAMMAD YOUNAS VS. THE STATE (2013 S C M R 669), ASLAM KHAN VS. QAISER KHAN AND 2 OTHERS (1999 P CR. L J 582) AND SYED AMANULLAH SHAH VS. THE STATE (P L D 1996 SUPREME COURT 241).**

4. On the other hand, learned counsel for the complainant has argued that applicants are habitual criminal and are involved in heinous offenses of murder and they do not deserve any concession of bail.

5. Learned A.P.G. has adopted the same arguments of learned counsel for complainant and has proposed that direction be given to the trial Court to record evidence of the prosecution witnesses first and then applicants may repeat file their bail application before the trial Court and whatever evidence come on record.

6. I have heard both the learned counsel for the parties and perused the material available on record. Admittedly, evidence against applicants is the statement of co-accused namely Talah Agha recorded before the police official that at the time of incident, they were also present in the rear seat of Car when co-accused Tlaah Agha was arrested. Applicant was not arrested during investigation on the bases of such statement their names so included in the case and were not shown absconders this only after their arrest in Crime No. 287/2014 of Police Station, registered for the offence U/s 147, 148, 149, 506/2,337A(i), 337F(1), 376, 365-B, PPC. Learned counsel states that on each and every date of hearing witnesses are appearing before the trial Court and on pretext on the other accused are causing delay and progress of trial.

7. Be that as it may, I am of the view that the material prosecution is co-accused the applicants at the movement, as per well settled principal of law the bail application is only tentative assessment of the material available on record as to hold and well tentative material and it is also that applicants are more required for further investigation in terms of Section 497-2, Cr. P.C. . His remaining in jail is of no consequences to the prosecution. Resultantly, applicants are granted bail subject to their furnishing

solvent sureties in the sum of Rs.2,00,000/ (Rupees two hundred thousand only) each with P.R. bonds in the like amount to be executed to the satisfaction of the trial Court. However, the trial Court at the same, it is made clear that if some evidence come on record against applicants during the trial, the complainant would be at liberty to move an application U/s 497(5) for cancellation of before appeal and further shall be decided by the trial Court on its merits. The trial Court is also directed to expedite the mater and conclude the trial within a period of three (03) months and if there accused while absconders, their case shall be separated and trial Court proceed with the case.

JUDGE

;Rafiq/P.A.