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IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Mohammed Karim Khan Agha**

Cr. Misc. Application No. 149/2016

Mst. Shamim Khatoon

V

Syed Shafiq Ahmed & another

Date of hearing	16.06.2017
Date of Order	19.06.2017
Applicant	Through Mr. Amir Jamil, advocate
Respondents No. 1 to 4	Through Mr. Munir Ahmed, advocate
Respondent No.5 The State	Through Mr. Zahoor Shah A.P.G.

ORDER

MOHAMMED KARIM KHAN AGHA, J. The applicant through this criminal miscellaneous application under section 561-A Cr.P.C. has challenged the order dated 15.08.2016 passed by learned IVth Additional Sessions Judge, Karachi East in Bail Application No.1019/2016, whereby the respondents No. 1 to 4's pre arrest bail was confirmed in Crime No.186/2016 for an offence u/s.302/34 PPC registered at PS Landhi (the impugned order).

2. The brief facts of the case as per FIR are that the complainant Mst. Shamim Khatoon lodged FIR at PS Landhi, Karachi wherein she has stated that 15 years back her daughter Shahla was married with Kamran, out of said wedlock 3 children namely, Alishba, Ali and Fatima were born. On 09.03.2016 her daughter has been murdered by the

accused persons by way of causing churri blows, electric shock and hitting of cricket bat.

3. After usual investigation, the challan was filed and the matter is now proceeding before the trial court.

4. Learned counsel for applicant submitted that the impugned order should be set aside as the learned trial court had erred in allowing the confirmation of pre arrest bail on account of the plea of alibi which was not available at the bail stage. In support of his contentions he placed reliance on **Ahsan Ali and another v. The State** (2001 P.Cr.L.J. 500), **Jan Muhammad v. Abdul Latif & 3 others** (2003 MLD 72) and **Hadayat Ali v. Muhammad Shahbaz** (2002 MLD 83).

5. Learned counsel for Respondents No.1 to 4 contended that impugned order was in accordance with law and emphasized that it was settled law that the plea of alibi could be grounds for granting bail and that the application to cancel the respondents pre arrest bail should be dismissed. In support of his contentions he placed reliance on **Ajmal Khan v. Liaquat Hayat and another** (PLD 1998 CC 97), **Said Akbar and another v. Gul Akbar and another** (1996 SCMR 931) and **Qadir Bakhsh v. Allah Wasayo & others** (SBLR 2007 SC).

6. Learned State counsel adopted the arguments of the applicant and submitted that the impugned order should be set aside and the pre arrest bail granted to the respondents should be cancelled.

7. I have considered the arguments of the learned counsel for the applicant, respondent and the State, perused the record and considered the relevant case law cited by them at the bar.

8. In essence the applicant seeks the cancellation of the pre arrest bail granted to the respondents by the impugned order.

9. It is well settled law that pre arrest bail cannot be granted unless there is malafide on the part of the complainant or the police who have lodged the FIR with ulterior motives in order to humiliate the respondents. In this respect reference may be made to the case of **Rana Muhammed Arshad V State** (PLD 2009 SC 427).

10. In this case it appears that the complainant and the respondents all live in the same house and are all related to the deceased and that there are bad relations between the complainant and the respondents and according to the respondents the FIR has been lodged by the complainant in order to blackmail them thus in my view there are shades of malafide in this case.

11. With regard to the evidence connecting the respondents to the commission of the crime it appears that originally the case was disposed of by the police in "C" class on account of a lack of evidence; that there is a two month delay in lodging the FIR for which no plausible explanation has been given; that in the FIR it appears that the complainant has shown

her suspicion against the respondents without any hard evidence; that Ms Azra Shafique who originally was granted ad interim pre arrest bail was not even sent up for trial; that there is no motive alleged against the respondents for the murder.

12. With regard to the applicants contention that bail cannot be granted on the plea of alibi this contention is without substance. The Hon'ble Supreme Court has held in **Ajmal Khan's case** (Supra) at P.100 Para 7 as under;

"7. No doubt the proposition is well settled that bail can be granted in a case of capital charge on the plea of alibi if peculiar facts and circumstances of that case so justify the findings in favour of grant of bail. The latest cases in support of this proposition are of Sajid Akbar and another v. Gul Akbar and another 1996 SCMR 931 and Malik Muhammad Saleheen v. Arshad Siddiq and others 1997 SCMR 1829. In the last mentioned authority of this Court (which was authored by me)." (bold added)

13. Thus, based on the material placed before me on a tentative assessment there is prima facie insufficient material to connect the respondents to the offense and this is a case of further inquiry and the impugned order requires no interference.

14. Even otherwise it is a well settled principal of law that the cancellation of bail can only be made in exceptional circumstances once granted. In this respect reliance is placed on the case of **Tariq Bashir V State** (PLD SC 1995 P.34 which held at P.41 Para 9.

"9. The consideration for the grant of bail and for cancellation of the same are altogether different. Once the bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds

would be required for cancellation thereof. To deprive a person on post-arrest bail of the liberty is a most serious step to be taken. There is no legal compulsion to cancel the bail of the accused who allegedly has committed crime punishable with death, imprisonment for life or imprisonment for ten years. Question of benefit of reasonable doubt is necessary to be determined not only while deciding the question of guilt of an accused but also while considering the question of bail because there is a wide difference between the jail life and a free life. So, benefit of reasonable doubt about occurrence itself, identity of the accused, part allegedly played by him in the occurrence, his presence on the spot and on the question of his vicarious liability, would go to him even at bail stage. It is by now judiciously recognized that there is tendency in our country to involve innocent person with the guilty. Once an innocent person is falsely involved in a serious case then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial. When a person is detained in the jail, all his dependents also suffer hardships. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistake relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case, albeit his acquittal in the long run. So, whenever reasonable doubt arises with regard to the participation of an accused person in the crime, he should not be deprived of the benefit of bail. The bail can neither be withheld nor cancelled as punishment.”(bold added)

15. This principle has recently been followed by the Hon'ble Supreme Court in the case of **Shahid Imran V State** (2011 SCMR 1614) which held as under at 1617 at Para 4.

“It has pertinently been noticed by us that the learned Judge-in-Chamber of the Lahore High Court, Lahore had cancelled the petitioner's bail granted to him earlier by the learned Additional Sessions Judge, Malikwal, District Mandi Baha-ud-Din without appreciating that considerations for grant of bail and those for its cancellation are entirely different. No allegation had been leveled against the petitioner regarding any misuse or abuse of the concession of bail by him and even today the complainant has not been able to level any such allegation against the petitioner. It had also not been appreciated by the learned Judge-in-Chamber of the Lahore High Court, Lahore that the investigation of this case had already been finalized and a Challan had been submitted before the learned trial Court and at such a

stage no useful purpose was likely to be served by cancelling the petitioner's bail. It is trite that bail ought not to be cancelled merely for wreaking vengeance of the complainant party."(bold added)

16. It is true that this is a murder case and a very serious offense however the seriousness of the offense does not exclude the ability for the courts for granting pre arrest bail in appropriate cases based on the particular facts and circumstances of the case and the relevant law.

17. In this case it is further noted that the respondents have fully co-operated with the police inquiry and attend the trial proceedings on each and every date of hearing and in fact after framing of the charge no PW has been examined because the complainant herself as admitted by her counsel has on at least two occasions sought an adjournment which lead to no evidence being recorded which again gives the impression of shades of malafides on the part of the complainant. It is for the complainant to seriously pursue her case and record her evidence rather than seek adjournments. Two of the respondents are of advanced age and none of the respondents are required any longer in the investigation and none of the respondents have misused the concession of bail granted to them by the impugned order.

18. Thus, in summary, based on the particular facts and circumstances of this case since there are shades of malafide on the part of the complainant, there is prima facie insufficient material on record to connect the respondents to the commission of the offense, that the complainant is

delaying the trial, that the respondents are attending on each and every date of hearing and are of an advanced age and have not misused the concession of bail and keeping in view the exceptional legal requirements which need to be met in order to cancel bail granted by a competent court of law, none of which have been made out in this case, I hereby dismiss the application for cancellation of bail and uphold the impugned order.