

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 766 of 2020

For Hearing of Bail Application

Mr. Sardar Akbar F. Ujjan Advocate for Applicant.
Mr. Shabbir Ali Bozdar Advocate for Complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: 08-02-2021

Date of Order: 08-02-2021

ORDER

AFTAB AHMED GORAR J. Through Crl. Bail Application, applicant Ahmed Khan s/o Rasool Bux Parvoo seeks post arrest bail in Crime No.118 of 2020, registered at P.S, Sadhooja under Sections 302, 452, 337A(i) & 337L(2) PPC. Earlier the bail plea of the applicant was declined by learned trial Court vide order dated 18.12.2020.

2. Allegation against the present applicant, as per FIR lodged by complainant Abdul Fatah on 27.04.2020 at 2030 hours, is that on the same date at 7.15 am, he in association with co-accused, duly armed with weapons and Lathies, committed murder of deceased Mst. Waziran, aunt of complainant so also caused injuries to Noor Muhammad and Mst. Marul, father and cousin of complainant.

3. Learned counsel appearing on behalf of the applicant argued that the applicant is innocent and has nothing to do with the alleged offence as he has falsely been implicated in this case due to admitted enmity; that there is inordinate delay of 13-hours in registration of FIR without plausible explanation, which gives presumption of false

implication of applicant after consultation and deliberation; that there is also counter case bearing FIR No.217 of 2020, in which both the sides have sustained injuries and it is yet to be determined at the time of trial as to which party was aggressor and who was aggressed upon; that investigation has been completed and the applicant is in jail as such no more required for further investigation and recovery. Lastly, he prayed for release of applicant on bail as the case against applicant calls for further enquiry, as envisaged under Sub-Section (2) of Section 497 Cr.P.C. In support of his arguments, learned counsel placed reliance upon the cases of Muhammad Shahzad v. The State **(PLD 2009 SC 58)**, Hamza Ali Hamza v. The State **(2010 SCMR 1219)**, Muhammad Shah alias Mudasar Shah v. The State **(2017 MLD 1299)**, Bashir Ahmed v. The State **(2008 YLR 2936)**, and Bashir v. The State **(1988 PCr.LJ 2317)**.

4. On the other hand, learned counsel appearing on behalf of the complainant vehemently opposed the grant of bail to the applicant on the ground that name of present applicant transpires in the FIR with specific role of participation in the commission of offence and specific role has also been attributed to him; that the ocular version is fully supported by the post-mortem report of deceased Mst.Waziran; that the repeater, used in the commission of offence, was also recovered from the possession of applicant; that the recovered repeater from the possession of applicant so also empty cartridge, recovered from the place of occurrence was sent to Forensic Science Laboratory, Larkana and as per report dated 01.06.2020, the Incharge of said Laboratory has opined that the empty was fired from the said repeater; that the

deeper appreciation of evidence is not required at this stage. Lastly, he prayed for dismissal of instant bail application. He relied upon the case of Shehryar Khan v. The State **(2020 SCMR 1436)**, Shabbir Hussain v. The State **(2018 YLR Note 97)** Altaf Hussain v. Aftab Ahmad **(2017 YLR 365)** and Pathan v. The State **(2016 YLR 1629)**.

5. Learned Additional P.G for the State while adopting the arguments advanced by learned counsel for the complainant opposed the grant of bail to the applicant.

6. Heard learned counsel for the parties at considerable length and perused the entire material available on record. On perusal of FIR, it is evident that alleged incident in the present case took place on 27.04.2020 at 0715 hours inside the house of the complainant and the FIR was lodged on same day at about 2030 hours. The delay in lodgement of the FIR has properly been explained by the complainant. So far ground of counter version is concerned, on perusal of FIR bearing Crime No.217 of 2020, it is also evident that the said FIR was lodged on 02.07.2020 by one Mazhar Ali in respect of an incident, which alleged took place on 27.04.2020, wherein the place of incident is shown to be a street of houses-village Khuda Bux Buriro, which is entirely different to the place of incident, as shown in the present case. Moreover, the present applicant has been attributed main role of committing the murder of deceased Mst. Waziran by causing her firearm injuries with his repeater, who succumbed to the injuries at the spot. The version of the complainant recorded in the FIR is fully supported by the PWs in their statements recorded under Section 161

Cr.P.C so also corroborated by post-mortem. The recovery of repeater, allegedly used by the present applicant in the commission of offence, was also effected from the possession of present applicant so also empty cartridge, secured from the place of occurrence, was also opined to be fired from the said repeater, as per report dated 01.06.2020, issued by Incharge, Forensic Science Laboratory, Larkana. It is well settled principle of law that at bail stage, deeper appreciation of evidence is not required. Prima-facie, there is sufficient material against the applicant to connect him with the commission of offence. I am fortified by case law relied upon by learned counsel for the complainant, wherein on identical and similar circumstances bail has been refused to the accused therein.

7. In view of above discussion, it can be safely said that there are reasonable grounds to believe that the applicant has played his specific role by committing the murder of deceased Mst.Waziran by causing her firearm injuries and the case falls under the prohibitory clause of Section 497(1) Cr.P.C disentitling the applicant for the grant of bail on the ground of further enquiry.

8. For what has been discussed above, I am of the considered opinion that applicant has failed to make out a case for grant of bail at this stage. Consequently, listed CrI. Bail Application **stands dismissed**. There is no cavil to the proposition laid down in the case law relied upon by learned counsel for applicant, but it has no relevancy to the facts and circumstances of the case in hand.

9. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided strictly on its own merits after recording evidence.

J U D G E