

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 112 of 2021

- 1.For orders on office objection.
- 2.For hearing of Bail Application.

Mr. Shabbir Ali Boizdar Advocate for Applicant.
Mr. Ghulam Mujtaba Jakhar Advocate for Complainant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of Hearing: 22-03-2021
Date of Order: 22-03-2021

ORDER

Aftab Ahmed Gorar J., On dismissal of his Bail Application by learned Additional Sessions Judge, Mirwah-Khairpur vide order dated 04.01.2021, Applicant/Accused Barkat Kubar has approached this Court by filing instant Crl. Bail Application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 76 of 2020, registered at P.S, Setharja, under Sections 302, 147 & 148 PPC.

2. The allegation against the present applicant, as per FIR lodged by complainant Shadan on 08.09.2020, is that on 05.09.2020 at about 1700 hours, present applicant in association with co-accused being armed with Iron Rod, as a member of unlawful assembly committed murder of deceased Ghulam Akbar alias Ali Akbar, nephew of complainant. Consequently, above FIR was lodged.

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 three days in registration of FIR without plausible explanation, which gives presumption of false implication of applicant after consultation and deliberation; that there is general allegation against the applicant for causing blows of iron rod to the deceased; that the recovery of iron rod has been foisted upon the applicant in order to strength the prosecution case; that Lastly, he prayed for release of applicant on bail as the case against the 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 *Mukaram v. The State* **(2020 SCMR 956)** and *Rasool Bux v. The State* **(2017 YLR Note 131)**.

4. As against the above contentions, 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 so also overt act of causing blows of iron rod to the deceased has also been attributed to him; that the ocular version is fully supported by the post-mortem report of deceased; that the iron rod, allegedly used by the applicant in the commission of offence, was also recovered from the possession of applicant, which was stained with blood; that the deeper appreciation of evidence is not required at this stage. In support of his contentions, he relied upon case of *Muhammad Zahid v. The State* **(2012 YLR 2790)**. Lastly, he prayed for dismissal of instant bail application.

5. Learned Deputy 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 the delay has been plausible explained by the complainant in the FIR, as the alleged incident took place on 05.09.2020 and after the incident deceased was brought to RHC, Mirwah, wherefrom he was referred to Civil Hospital, Khairpur and wherefrom deceased was also referred to Chandka Hospital, Larkana, where he succumbed to the injuries and thereafter such information was conveyed to the police and through police, the post-mortem of the deceased was got conducted at RHC, Mirwah and after burial ceremony, the FIR was lodged. Moreover, the present applicant has been attributed specific role and overt act of causing blows of iron rod to the deceased and it is also an admitted fact that after arrest of the applicant, said iron rod, used in the commission of alleged offence was also recovered from the possession of the applicant, which was also stained with blood. 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. 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, in which an innocent soul, aged about 34/35 years, has lost his life. In case of Muhammad Zahid (**supra**), relied upon by learned counsel for the complainant, the single Bench of

this Court in similar circumstance of the case has refused bail to the accused therein on the ground that accused and co-accused were alleged to have iron rods in their hands which showed their common intention to fight, which ultimately resulted in the death of deceased, therefore, common intention as provided under Section 34, PPC could not be ignored.

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 by causing him blows of iron rod 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 Crl. 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

Ahmad