

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.552 of 2024

Applicant : i. Ismail Khan S/o Muhammad Idrees Khan
ii. Erum Sultana
through M/s. Javaid Ahmed Chhatari and
Saima Shahreen Abbasi, Advocates

Respondent : For Complainant:
Mr. Muhammad Idrees Khan,
Complainant/Advocate

For State:
through Mr. Qamaruddin, APG

Date of hearing : 12.02.2025

Date of order : 12.02.2025

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.347/2023 for the offence under Sections 302/34 PPC registered at PS Nazimabad, after their bail plea has been declined by the learned 1st Additional Sessions Judge/MCTC, Karachi Central vide order dated 26.02.2024.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicants, applicants are innocent and have falsely been implicated in this case; that FIR is registered after a delay of one month and no plausible explanation has been furnished; that there is dispute over the house and claim of the complainant is that he is the owner of the said house whereas the house is in the name of grandfather of the applicant; that complainant is the real father of applicant No.1 Ismail Khan; that after the death of Mst. Yasmeen Sultana, the dead body was exhumed and cause of death was due to suffocation; that the

applicants have not misused the concession of bail. Lastly, he prays for confirmation of bail.

4. On the other hand, Complainant, who is said to be an Advocate, submits that he is a sugar patient and facing serious health issues due to torture committed by the accused persons; however, submits that accused are involved in five murder cases in order to occupy the house. He has also made payment but they are still occupying his house. Lastly, he submits that present applicant is not his real son. Learned APG supported the arguments advanced by the learned counsel for the complainant.

5. Heard the parties and perused the material available on record.

6. From perusal of record, it reflects that the FIR was registered with a delay of one month for which no plausible explanation has been furnished; however, from the face of FIR, there is a dispute between the parties over the house and subsequently, Mst. Yasmeen Sultana was died and she was buried but complainant moved an application for exhumation of the dead body, which was allowed and subsequently, the dead body was exhumed and post-mortem of the deceased was conducted. As per report of the Doctor, the cause of death is asphyxia secondary to compression over neck. Furthermore, not a single person has stated against the applicants that they have given poison to the said deceased or strangled her from the neck. The applicants have joined the investigation and they are no more required for further investigation. The ocular evidence does not find support from the medical evidence. At bail stage, only tentative assessment is to be made and deeper appreciation is not permissible.

7. In view of the above, learned counsel for the applicants has made out case for grant of bail in terms of subsection 2 of section 497 Cr.P.C. Resultantly, the instant bail application is **allowed**. The interim pre-arrest bail granted to the applicants/accused vide order dated 08.03.2024 is hereby confirmed on same terms and conditions. The Applicants are directed to attend the trial. However, it is made clear that if the applicants/accused misuse the concession of bail, learned trial Court would be at liberty to take appropriate action.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Kamran/PA