

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO
Crl. Bail Appln. No.D-05 of 2022.

Date _____ Order with signature of Judge _____

Present:

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Shamsuddin Abbasi,

1. For orders on office objection 'A'.
2. For orders on M.A.No.1433/2022
3. For hearing of bail application.

17.05.2022.

M/s Ali Nawaz Ghanghro and Mumtaz Ali Jessar, advocates for the applicant.

Mr. Ali Anwar Kandhro, Addl. P.G. assisted by Mr. Imran Ali Abbasi, Asst. P.G. for the State.

Mr. Ashfaq Hussain Abro, advocate for the complainant along with complainant.

ORDER.

MUHAMMAD SALEEM JESSAR, J.- Through this application, applicant Vineeb son of Ghansham Das, seeks his release on bail in Crime No.18/2021, registered with Police Station City, Jacobabad, under Sections 302, 201, 336-B, PPC read with Section 6/7 of Anti-Terrorism Act, 1997.

2. The case after thorough investigation was challaned by the police on 10.11.2021, which is now pending for trial before the Special Judge, Anti-Terrorism Court, Shikarpur, vide Special Case No.74/2021 re: State v. Vineeb. The applicant preferred his bail application before the trial Court, which by means of order dated 03.03.2022 was declined, hence this bail application.

3. Brief facts of the prosecution case as narrated in the F.I.R. lodged by complainant Ashok Kumar, Hindu on 27.02.2021, at 2315 hours, are that on 24.02.2021 complainant, his son Mahesh Kumar, aged about 24 years, his uncle Shaman Lal son of Warand Mal Hindu, r/o Gharibabad Mohalla, Jacobabad, and relative Satiyapal son of Kania Lal Hindu, r/o Quaid-e-Azam Road, Jacobabad, along with other family members were available in the house, when at 4:30 p.m. his son Mahesh Kumar went out of the house, then his uncle and relative also went towards their houses, but his son Mahesh Kumar did not return to home and as per routine they all went to sleep. On 25.02.2021, early in the morning, they came to know that a dead body was found in the

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Dangar Mohalla, thereafter complainant along with his uncle Shaman Lal and relative Satiapal went to Dangar Mohalla, where they saw many people gathered and in an empty plot, on the ground one dead body was lying. They saw and identified the dead body of Mahesh Kumar (son of complainant). They found the dead body of deceased with one injury on right side of nape, which was exited near left eye, blood was oozing, 2.nasal bone was broken, 3.scratch on neck, 4.left side face, left arm, left leg and right leg were blacken, 5.tongue was between the teeth, and was dead. Thereafter, they informed to police and with the help of police, took dead body of deceased to Civil Hospital, Jacobabad and after getting conducted postmortem, dead body was handed over to them. After performing religious rituals (cremation ceremony), complainant appeared at Police Station and lodged the FIR to the above effect.

4. Learned counsel for the applicant submits that the name of the applicant does not find place in the F.I.R; besides, he was implicated on the basis of C.D.R. as well as further statement of the complainant recorded by the police on 08.11.2021, some nine months later from the alleged incident. He further submits that though some articles are shown to have been recovered at the pointation of the applicant from his home; however, according to him, same have been foisted and nothing was produced, as alleged. He further submits that per prosecution case, the applicant allegedly committed murder of deceased at his home at first floor and then shifted his dead body from his home to other place, which is impossible for applicant himself alone to shift dead body from one place to the other at his own shoulders. He next submits that the car allegedly shown to have been recovered from applicant belongs to one Ravi Kumar, who was arrayed as an accused, but was subsequently let-of by the police and such order has not been challenged by the complainant party, which has attained finality. He further submits that evidence collected by the police does not tally with the allegations leveled in the F.I.R. In support of his contentions, he places reliance upon the cases of *Muhammad Parvaiz v. The State* (2019 YLR 2213), *Arjmand Shahzadi and another v. The State and another* (2019 P.Cr.L.J 569) & *Asfandiyar and another v. Kamran and another* (2016 SCMR 2084). He lastly submits that the case against the applicant requires further enquiry, therefore, he may be granted bail.

5. On the other hand, learned Addl. P.G., appearing for the State, opposes the bail application, on the grounds that sufficient

evidence has been collected by the police and even some incriminating articles are also shown to have been recovered at the pointation of applicant, therefore, he is not entitled for the concession of bail. Learned Additional P.G., however, does not controvert the fact that single person can commit the murder and then shift his dead body to other place at his own shoulders. He, however, opposes the bail application.

6. Mr. Ashfaque Hussain Abro, learned counsel for the complainant, along with complainant, opposes the bail application and submits that the applicant and the deceased were fast-friends; besides per his instructions, the applicant had borrowed huge amount from the deceased and on demand the applicant committed his murder. Mr. Abro further submits that a car through which dead body was shifted was also recovered from his home, hence the bail application merits no consideration and may be dismissed. He, however, admits that Ravi Kumar, whose car allegedly was used in the crime, was let-of by the police and such report was submitted before the Magistrate, who also concurred with the police opinion; however, said order was not challenged by the complainant and consequently it (order) attained finality.

7. We have heard learned counsel for the applicant, learned Addl. P.G. and the counsel for the complainant and have gone through the available material with their able assistance.

8. It is an admitted position on record that nobody was nominated by the complainant in his F.I.R, which was lodged with the delay of about more than three days and per F.I.R the dead body was secured from an open space/plot belonging to Lashari community and nothing was recovered from the place of incident. No specific motive has been shown by the complainant against the applicant rather as per material available on record it has been brought that the applicant and deceased were fast-friends to each other. The moot point, which has constrained us to discuss, is that the dead body of deceased was allegedly shifted from the house of applicant at his own shoulders and such assertion/claim of the prosecution has been belied by the prosecution itself in the evidence. As per postmortem notes, the deceased was strangled with rope and even such rope was not recovered by the police during investigation; those postmortem notes are very much evident and clear that the marks of strangulation with rope are visible, yet police did not disclose this fact in the investigation.

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The complainant, who is father of deceased, present in Court, admits that deceased was strangled and was not shot dead. Per memo of dead body dated 25.02.2021, police found foot marks of four persons around dead body and surprising enough those four persons were not arrayed as accused and the applicant only was made as scapegoat for the reasons best known to the police. Though F.I.R was lodged on 27.02.2021, however, statements of P.Ws and further statement were recorded on 06.03.2021. P.W Shaman Lal is said to be uncle of complainant and Satiapal is his friend, even then they did not disclose the names of the culprits to him right from the date of incident to 06.03.2021.

9. No doubt, an innocent adolescent boy has lost his precious life, for which everyone has sympathy, but it does not mean that burden of such accusation may be determined without recording evidence of prosecution witnesses. The material collected during investigation and made available on record shows that deceased alleged was strangled, whereas a firearm injury is also shown to have been made upon the deceased, which diverts the prosecution version into two stories, which are yet to thrashed out by the trial Court as to which one is correct and which one is afterthought. From the postmortem notes it appears and the complainant present in Court also admits that deceased was strangled with rope. The dilemma so created in the prosecution investigation cannot be believed in toto, particularly at this juncture when accusation against the accused is yet to be determined by the trial.

10. It is well-settled principle of law that every accused would be presumed to be blue-eyed boy of law until and unless he may be found guilty of the alleged charge and law cannot be stretched upon in favour of the prosecution, particularly, at the bail stage. We, therefore, in the light of above discussion and material collected by the police during investigation are of the view that the case against the applicant is of further enquiry as contemplated under sub-section (2) of Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court.

11. Since the charge against the accused has been framed, hence the parties present before the Court are directed to ensure their

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attendance before the trial Court on forthcoming dates. The trial Court is also directed to expedite the trial on day-to-day basis. In case, the counsel for the accused or anybody acting on his behalf may seek adjournment on any flimsy ground(s), the trial Court shall be competent to cancel the bail of the applicant without issuing notice to him.

12. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.


Judge


Judge