

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 651 of 2017

Applicant: Muhammad Amin, son of Shamim Ahmed
through Qadir Hussain Khan, Advocate

State: Ms. Seema Zaidi, D.P.G. along with I.O. of
the case

Complainant: Muhammad Adnan through S. Ghulam
Hasnain, Advocate

Date of hearing: 03.08.2017

ORDER

ADNAN-UL-KARIM MEMON, J: The Applicant namely Muhammad Amin is seeking Post-arrest Bail in F.I.R No. 274/2016 registered for offences under section 302/34 P.P.C. at Police Station Surjani Town, Karachi.

2. Brief facts of the case are that on 05.07.2016 Complainant (Muhammad Adnan) lodged FIR against unknown person for murder of his younger brother (Muhammad Rehan) by weapon. That on 04.07.2016 at about 09:00 a.m. Muhammad Rehan went to work at the factory situated in New Karachi Industrial Area on Motorcycle No. KBZ-9326 and did not come back till midnight and his both mobiles that is, SIM No. 0310-4646266 and 0345-6153211 were switched off. That Complainant along with a friend of Muhammad Rehan attempted to search him but, could not succeed. Then they went to Chipa Mortuary and found dead body of Muhammad Rehan. The staff of Chipa Mortuary informed that the dead body has been sent by Surjani Town Police Station. They went to obtain Permission in writing from ASI Sikandar Ali of said Police Station. Thereafter, Complainant buried the dead body in graveyard and came back to said Police Station for lodging F.I.R.

3. Duty Officer A.S.I Tarique Ali reported that on 05.07.2016 he received information that one dead body is lying at Peoples Housing Society, sector 52, Surjani Town, Karachi. He went to the said place and saw that one dead body of a person aged about 22/23 years is lying on the road and the public was standing around it. A.S.I called Chipa Ambulance to take away the dead body to Abbasi Shaheed Hospital for postmortem. After obtaining Postmortem Report he fulfilled other legal requirements, obtained pictures of the dead body and handed over same to Chipa Mortuary. Upon return to Police Station saw Complainant who had come to lodge F.I.R against unknown person. Investigating Officer visited place of incident, secured and sealed one bullet shell of 30 bore pistol from the spot for F.S.L, recorded statement of witnesses, obtained CDR of SIMs of deceased (Muhammad Rehan), searched for accused and found from CDR record that deceased received calls on his SIMs from mobile no 0345-2301377 and 0315-8129707. Therefore, also obtained CDR of those mobile numbers and thereafter searched for the person who called on the cell phone of the deceased. On 19.07.2016 Muhammad Amin (Applicant) and Sunny alias Munna were arrested and mobile phone of deceased (Muhammad Rehan) as well as another mobile phone was recovered from his possession. Muhammad Amin (Applicant) and other accused persons were interrogated. During interrogation accused persons admitted their guilt that two days before murder of Muhammad Rehan accused persons mixed intoxicating drugs in his drink and committed theft of Rs.50, 000/- belonging to Muhammad Rehan (deceased). After the said theft Muhammad Rehan was threatening accused persons to report the matter to police. Therefore, Applicant (Muhammad Amin) fired at deceased from his pistol and threw the dead body at the road. Police on pointation of Applicant recovered 30 bore pistol and

registered case under Section 23(1)-A of Arms Act, 2013 as well. On 19.12.2016 Applicant moved Bail Application before learned Trial Court which was declined vide Order dated 21.01.2017. Thereafter, Applicant has approached this Court for grant of Post-arrest Bail.

4. Mr. Qadir Hussain Khan, learned counsel for Applicant has contended that Applicant is innocent and has been falsely implicated in the present crime; that the name of Applicant is not mentioned in the FIR nor any role is assigned to him; that brother of deceased clearly mentioned that he called on both cell numbers of deceased but, the same were switched off. It means it was in knowledge of Complainant that both numbers were in use of the deceased. Therefore, alleged recovery of SIMs from the Applicant is nothing but a concocted story. That entire case is based on hearsay evidence. That alleged incident is un-seen therefore, Applicant cannot be saddled with criminal liability. That admission of Applicant during the course of investigation before police is inadmissible in evidence under Article 38 and 39 of Qanoon-e-Shahadat Order, 1984. That Investigating Officer has failed to record confessional statement of Applicant under section 164 Cr.P.C, if at all the applicant allegedly confessed before the police. That statement of Complainant as well as witnesses are contradictory therefore the same cannot be believed at bail stage. That there is delay in lodging of FIR for which no plausible explanation is given by the Complainant. That there is no independent witness of alleged recovery which is violation of section 103 Cr.P.C. That entire case requires further inquiry into guilt of Applicant, therefore, may be granted Post-arrest Bail. In support reliance is placed upon the case of Haji Khalil Ahmed and others v. The State (2007 P.Cr.L.J 1620), Zulfiqar Ali v. The State

and others (2014, YLR, 133), Shahid Mehmood Chaudhary v. The State and others (2017, YLR, 1074).

5. Ms. Seema Zaidi, learned D.P.G. for the State has opposed grant of bail to the Applicant.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. Tentative assessment of record reflects the following aspect of the case:

- a. That Applicant was arrested on 19.07.2016 and at the time of his arrest mobile phone belonging to deceased were recovered from possession of accused.
- b. That Call Data Record of mobile phones are prima-facie connecting Applicant with the commission of crime.
- c. That confessional statement of Applicant show that on his pointation police recovered crime weapon that is, 30 bore pistol.
- d. That FSL Report of recovered pistol and bullet shell as well as statement of witnesses is in support of the prosecution case.
- e. That Complainant, witnesses and police have no grudge or enmity with Applicant.
- f. That medical evidence supports the prosecution version.
- g. That prosecution has collected sufficient incriminating material to connect Applicant with the commission of crime.

8. In view of above facts and circumstances Applicant has failed to make out case for grant of bail at this stage. Therefore, Bail Application is dismissed.

9. The above observation is tentative in nature which shall not prejudice the case of either party at the trial. However, learned Trial Court is directed to record evidence of material witnesses within a period of three months. Thereafter, Applicant will be at

liberty to move fresh Bail Application before learned Trial court on fresh ground, if any.

10. Foregoing are the reasons of short order dated 03.08.2017.

JUDGE