

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Appln. No. 589 of 2018

Present

Mr. Justice Aqeel Ahmed Abbasi.

Date of hearing : 13.06.2018
Date of order : 13.06.2018
Applicant : Muhammad Nawaz through
Rana Muhammad Arshad,
Advocate.

Versus

Complainant : Shahbaz Nabi Butt
through Mr. Naveed Ali, Advocate
Respondent : The State through
Mr. Gul Muhammad Farooqi,
ADPP

ORDER

Aqeel Ahmed Abbasi, J. Being aggrieved and dis-satisfied by order dated 07.04.2018 passed by learned IInd Additional Sessions Judge, Karachi East, on Criminal Bail Application No.07 of 2018 emanating from FIR No.147 of 2014 registered under section 302/34 PPC at Police Station Gulshan-e-Iqbal, Karachi, whereby, the bail application of the applicant was dismissed, the applicant has filed instant bail application before this Court seeking his release on bail on furnishing surety.

2. Learned counsel for the applicant has argued that applicant is innocent, who has been falsely implicated in the instant crime by the Police on the basis of statement of co-accused recorded by the Police, whereas, according to learned counsel, no direct role has been assigned to the applicant in the FIR. Per learned counsel, the only allegation against the applicant reflected in the challan

submitted in the instant case is that the applicant had conspired to get the murder of the deceased through co-accused persons, however, nothing has been produced on record by the prosecution against the applicant to connect him with the alleged offence. It has been contended by the learned counsel for the applicant that co-accused persons have already been arrested, who are facing trial, whereas, the applicant himself surrendered before this Court for obtaining protective bail, which was granted, however, since the applicant was arrested in another crime, therefore, could not obtain bail from the learned trial Court, who has been subsequently arrested in the instant crime and since then he is behind the bar, whereas, the learned trial Court has not concluded the trial inspite of the directions of this Court in the case of co-accused, namely, Ashfaq Ahmed, in Crl. Bail Application No.383/2017, vide order dated 13.11.2017, whereby the learned trial Court was directed to record the evidence, preferably, within a period of one month and to announce the judgment within a period of two weeks thereafter. Per learned counsel, role of the present applicant is similar to the role of co-accused, namely, Razzaq, who has already been granted bail by this Court vide order dated 21.10.2015, hence requests that the applicant may also be enlarged on bail in view of rule of consistency, whereas, no incrementing material or evidence has been produced by the prosecution against the applicant, and the matter requires further inquiry. It has been further argued by the learned counsel for the applicant that inordinate delay in the conclusion of trial inspite of Court's direction and inability of the prosecution to establish the allegation of conspiracy to commit murder of the deceased by producing any material or evidence also entitles the applicant to be released on bail. Per learned counsel, keeping the applicant behind the bar in the absence of his name in the FIR or even in the challan regarding an overt act of committing murder would amount to punishment before his conviction, hence requests that applicant may be released on bail subject to his furnishing surety to the satisfaction of the learned trial Court. In support of his contention, learned

counsel for the applicant has placed reliance in the case of *Irsalan Zohaib v. The State and others* (2016 SCMR 1217).

3. Conversely, Mr. Naveed Ali, learned counsel for the complainant has opposed the grant of bail to the applicant and submits that since the material witnesses have been examined and trial is about to conclude, therefore, instead of releasing the applicant on bail, directions may be issued to the learned trial Court to conclude the trial and announce the judgment at an early date. It has been further contended by the learned counsel for the complainant that since co-accused has nominated the applicant in the instant crime, therefore, it will be appropriate if the trial is concluded so that the role of the present applicant may be determined after conclusion of trial. Mr. Gul Muhammad Farooqi, learned ADPP supports the contention of learned counsel for the complainant and opposes the grant of bail on the ground that some of the prosecution witnesses have been recently examined, therefore, directions may be issued to the trial Court to conclude the trial at an early date, instead of enlarging the applicant on bail.

4. I have heard both the learned counsel as well as learned ADPP and perused the record. On tentative assessment of the record and keeping in view the contents of the FIR, it appears that the name of the applicant is not mentioned in the FIR, whereas, the applicant has been implicated in the instant crime by the Police on the basis of statement of co-accused recorded by the Police. It further transpires that the only allegation against the applicant reflected in the challan submitted in the instant case is that the applicant had conspired to get the murder of the deceased through co-accused persons, however, no direct evidence or material has been produced on record by the prosecution against the applicant to connect him with the alleged offence. It further transpired that the learned trial Court has not concluded the trial inspite of the directions of this Court in the case of co-accused, namely, Ashfaq Ahmed, in Crl. Bail Application No.383/2017, vide order dated 13.11.2017, whereas, not a single witness was examined at the time when instant bail applicant was filed. No incriminating material has been

placed on record, which may directly connect the applicant with the alleged crime, hence the matter requires further inquiry. Moreover, statement of co-accused recorded in police custody at a belated stage and allegation of conspiracy requires further inquiry into the guilt of applicant/accused.

5. In view of hereinabove, I am of the opinion that the applicant has made out a case for grant of bail. Accordingly, the applicant was admitted to bail subject to his furnishing solvent surety in the sum of Rs.3,00,000/- (Rupees Three Lac Only) and P.R. Bond in the like amount to the satisfaction of the learned trial Court vide order dated 13.06.2018 and these are the reasons for such short order.

6. Needless to observe that the observations made hereinabove are tentative in nature and shall not prejudice the merits of the case, which shall be decided strictly in accordance with law and on the basis of evidence on record, preferably, within a period of two months' from the date of this order.

7. However, it is clarified that if the applicant misuses the concession of bail in any manner, the learned trial Court shall be at liberty to proceed against the applicant as per law.

J U D G E