

THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 508 of 2020

[Abdul Rasheed v. The State]

Applicant/ Accused : Abdul Rasheed son of Ghulam Rasool through Mr. Javed Anwar, Advocate.

Complainant : Ghulam Ali son of Allah Diwaya, through Mr. Asif Mubarak Ali, Advocate.

The State : Through Ms. Rubina Qadir, Deputy Prosecutor General Sindh alongwith I.O. Abdul Ghaffar, P.S. Surjani Town

Date of hearing : 28-07-2020

Date of order : 28-07-2020

FIR No.193/2019
P.S. Surjani Town, Karachi
u/s: 324/302/34 PPC

ORDER

Adnan Iqbal Chaudhry J. - Per the FIR, the Complainant reported that a week earlier, his son Fayyaz had a fight with Shaukat; that on 16-03-2019 @ 05:00 p.m. (day of incident and FIR), Shaukat and his brothers, namely Babar and the Applicant/Rasheed fired upon the Complainant and his sons Fayyaz and Irshaad; that one bullet hit Irshaad on the chest and one hit Fayyaz on his calf; and that the Complainant too was injured on the head with a pistol butt and on the leg with a *danda*.

2. Per the challan, Irshaad succumbed to injuries and passed away on 17-03-2019; that 5 empties of a 9 mm weapon and a broken *lathi* were recovered from the place of incident; that the Complainant was in fact injured with a *danda* blow on the head; and while the other two accused were absconding, the Applicant was arrested on 14-07-2019 @ 03:45 hours from a road-side café in Shah Latif Town where the I.O. was lead by the Complainant and a witness to point out the Applicant as one of the accused.

3. Per learned counsel for the Applicant, the Applicant has been roped-in only because he is the brother of the co-accused Shaukat; that the CDR of the mobile phone of the Applicant obtained by the I.O. is his *alibi* which shows that the Applicant was not even present at the time and place of the incident, and that it was the Complainant himself who had called the Applicant on his mobile phone to inform him of the incident. On the other hand, both the learned counsel for the Complainant and the learned Deputy Prosecutor General Sindh opposed bail on the ground that the FIR shows motive for the murder and that the plea of *alibi* cannot be considered at the bail stage as it entails a deeper appreciation of the evidence.

4. Heard the learned counsel.

5. As regards assessment of the plea of *alibi* at the bail stage, the case of *Zaigham Ashraf v. The State* (2016 SCMR 18) is instructive. There it was held that :

“6. There is no hard and fast rule that plea of *alibi* shall not be considered at bail stage because while granting or refusing to grant bail to an accused person, the Court is not required to see and consider the materials/evidence, collected in favour of the Prosecution but also to give proper attention to the defence plea, taken by an accused person.

9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion *albeit* tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised by the Judges in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with capital punishment. The Courts are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.

10. In the case of *Amir v. The State* (PLD 1972 SC 277) it was held that, 'For purposes of bail, law is not to be stretched in favour of prosecution. Benefit of doubt, if any arising, must go to accused even on bail stage'. Similar view was taken in the case of *Manzoor v. The State* (PLD 1972 SC 81). These principles so laid down, are based on enunciation of law in interpreting the provision of section 497, Cr.P.C. and broader principle of justice. Till date, no departure or deviation has been made therefrom by this Court. These are the principles of law and have binding effect and shall be construed as guiding principles by all the Courts in the matter of grant or refusal of bail."

Thus, in view of the dictum of the Supreme Court in *Zaigham Ashraf (supra)*, it is a misconception to argue that the plea of *alibi* taken by the defence can never be considered at the stage of bail.

6. The incident is said to have taken place outside the residence of the Complainant in Malla Karim Bux Goth, Taisar Town, Lyari, Karachi. However, the CDR of the Applicant's mobile phone (0308-1181990), placed on the record today by the I.O., shows the location of that phone at Qayyumabad, Karachi from 14:30 hours on 16-03-2019 to the following day, and it also shows that between 18:32 hours to 18:57 hours on 16-03-2019 (soon after the incident), calls were received on that phones from mobile number 0300-2363287 which is said to that of the Complainant. Therefore, the Applicant's plea of *alibi* is not without force. Apparently, the parties are known to each other and there was enmity between the Complainant's son Fayyaz and the Applicant's brother Shaukat. In alleging that the accused party had fired upon the Complainant party, the FIR does not ascribe a specific role or a specific weapon to the Applicant, nor has the crime weapon been recovered from the Applicant. Thus at this stage, the element of throwing the net wide to implicate the Applicant cannot be ruled out.

7. For the foregoing reasons, the case against the Applicant is one of further enquiry falling within the ambit of sub-section (2) of section 497 Cr.P.C. Consequently, the Applicant is admitted to bail subject to

furnishing solvent surety in the sum of Rs. 300,000/- [Rupees Three Hundred Thousand only] alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either party at trial.

JUDGE

*SHABAN/PA**