

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-448 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of main case.

03.10.2019.

Mr. Ishrat Ali Lohar Advocate for the Applicant.

Ms. Sana Memon, A.P.G, Sindh.

Zulfiqar Ali Sangi, J.-Through instant application, Applicant Sohail alias Sono seeks post-arrest bail in Crime No.21 of 2018, registered at Police Station Kot Ghulam Muhammad, under section 302, 506(ii), 337-H(ii), 504, 34 PPC. Initially, bail plea preferred by the Applicant was declined by learned Sessions Judge, Mirpurkhas vide order dated 04.12.2018.

2. The facts of the prosecution case, in brief, are that on 29.03.2018 at 0310 hours complainant was informed on telephone by his brother Aijaz (deceased) that accused persons namely Nauman Hameed and others entered in his house and the present Applicant / Accused Sohail alias Sono caught hold his arms whereas co-accused namely Nauman Hameed fired from his pistol at him (Aijaz). This incident was witnessed by Shahbaz (brother of the deceased) and Junaid. That injured at the first instance was taken to hospital, where he succumbed to his injury. Thereafter, the said F.I.R. was registered.

3. Learned counsel for the Applicant submits that there is delay in lodging of F.I.R. as the incident was taken place on 29.03.2018 but F.I.R. was registered on 31.03.2018; that the Applicant was shown as empty handed and it was co-accused Nauman Hameed who directly fired at the deceased; that on 29.03.2018 one N.C was registered at Police Station wherein names of the accused persons were not mentioned; that 161 Cr.P.C. statements of the eye-witnesses namely Shahbaz and Junaid were recorded on 04.04.2018 and no explanation for such delay has been furnished. He further contends that

nothing incriminating has been recovered from the Applicant and states that case of the Applicant covered under section 497(2) Cr.P.C. He relied upon the cases of (1) **Muhammad Naveed v. The State** (2014 PCr.LJ 1548), (2) **Qassim v. The State** (2001 YLR 214), (3) **Ali Shah v. The State** (2002 PCr.LJ 707) and (4) **Muhammad Irfan v. The State** (2010 YLR 2839). Lastly, he requested that Applicant may be enlarged on bail.

4. Learned A.P.G. while opposing the bail plea of the Applicant has argued that the delay in lodging the F.I.R. has been properly explained by the complainant as he was busy in the treatment of injured Aijaz (deceased) and it was subsequently on his death he came at police station and lodged such F.I.R; that statements under section 161 of P.Ws Shahbaz and Junaid were recorded wherein they have fully implicated the Applicant in commission of offence. Lastly, she contends that Applicant has shared common intention with co-accused, resultantly Aijaz (brother of the complainant) had died and requests for dismissal of this application.

5. I have heard the arguments of parties counsel and perused the record.

6. On perusal of entry / station diary shows that this incident was informed to police on the same date at 0325 hours, F.I.R. in the case, thus, would be the said station diary in which the complainant had narrated some details of the incident to the police. Names of the accused were not mentioned in the station diary and after said station diary the statement of the complainant incorporated in section 154, Cr.P.C. book can be treated as further statement as has been held by this Court in case of **Nooruddin and another v. The State** (2005 MLD 1267).

7. Admittedly, statements under section 161 Cr.P.C. of the witnesses were recorded on 04.04.2018 and the delay in recording such statements has not been explained so this ground alone is sufficient to grant bail to the Applicant. In this context, reference can be made to the case of **Suba Khan v. Muhammad Ajmal and 2 others** (2006 SCMR 66) wherein the Honourable Supreme Court of Pakistan observed as under:-

“ ----S. 497(5)---Penal Code (XLV of 1860), Ss,302/324/148/149---Constitution of Pakistan (1973), Art.185(3)---Cancellation of bail, refusal of---Occurrence had taken place at night in which a number of accused had participated---Statements of the injured witness as well as of the two women witnesses who were inmates of the house were not recorded on the same day---High Court in circumstances had rightly formed the opinion that the essential conditions for grant of bail under 5.497(2), Cr.P.C. were satisfied, and the same did not call for any interference by Supreme Court-- -Petition for cancellation of bail was consequently dismissed and the leave to appeal was refused accordingly.”

In another case law i.e. **Muhammad Mansha v. The State** (1997 Cr.LJ 569),

it was held as under:-

“S. 497(2). Accused would be entitled to bail when statements of P.Ws. recorded two days after occurrence make their case one of further inquiry.”

8. The role against the Applicant as alleged in the F.I.R was only to catch hold the arms of the deceased and no other active role has been attributed to him. Applicant was arrested on 31.03.2018 on the same day when F.I.R. was registered but at the time of arrest so also during investigation nothing incriminating was recovered from him. The mashirnama of place of inspection of Wardat shows that only one empty was recovered which allegation is only against co-accused Nauman Hameed and in absence of an active role Applicant cannot be said to share common intention for committing the murder of the deceased. It is well settled principle of law that deeper appreciation of evidence is not permissible at bail stage and the material has to be assessed tentatively. Almost in similar facts and circumstances Honourable Supreme Court of Pakistan has granted bail in an unreported case of **Makhno v. Haji Moula Bux & another** (Cr. Petition No.607 of 2019).

9. While considering the facts and circumstances of the case tentatively, the Applicant has made out a good prima facie case for grant of bail, therefore, bail application is allowed and Applicant is admitted to post-arrest bail in the aforementioned crime subject to furnishing his solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention that the observations made hereinabove are tentative in nature and will not cause any prejudice to either party at trial.

JUDGE