

THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 1083 of 2019

[Arif Baloch v. The State]

Applicant : Arif Baloch son of Yar Muhammad through Mr. Raham Ali Rind Advocate.

Complainant : Shafqat Hussain son of Ajan through Mr. Liaquat Ali Khaskheli Advocate.

The State : Mr. Sagheer Ahmed Abbasi, Assistant Prosecutor General Sindh.

Dates of hearing : 13-11-2019 and 14-11-2019

Date of order : 14-11-2019

ORDER

Adnan Iqbal Chaudhry J. - On or about 19-05-2019, the Applicant/Accused namely Arif Baloch was arrested pursuant to investigation into FIR No.166/2019 under sections 302, 34 PPC, P.S. Awami Colony, Karachi, for the murder of one Ajan son of Haji Ahmed (deceased). Vide order dated 10-07-2019, the VIII-Additional Sessions Judge, Karachi (East) rejected his bail; hence this bail application.

2. On 26-03-2019, statedly between 16:00 and 17:00 hours, the body of the deceased was discovered in the water tank of house where he resided. The cause of death is said to be an injury to the head by a pressing iron. The FIR was lodged against unknown persons on 30-03-2019 by the deceased's son who stated that the deceased had been residing separately for the last 3/4 years.

3. During investigation, one Ghulam Shabbir is said to have come forth to state (under section 161 Cr.P.C.) that he used to frequently pass by the deceased's house and exchange greetings when the deceased was sitting outside his house; that on the day the

deceased was murdered, he saw the deceased being taken into his house by force by 3 persons; and that he could recognize those 3 persons if he sees them again.

4. Per the charge sheet dated 25-05-2019, on the information of an informant, the co-accused Shafqat Ali was arrested; during interrogation Shafqat Ali confessed to the murder and also named Ahmed Raza and the Applicant as accomplices; Ahmed Raza and the Applicant were then arrested; both took the plea of *alibi*; Ahmed Raza claimed to be on duty as a clerk at the Saudi Embassy while the Applicant claimed to be on duty in a denim garment company; the attendance of both Ahmed Raza and the Applicant at their respective work-place at the relevant time was verified from their respective employers; per the CDR, the cell phone of Ahmed Raza at the relevant time was at his home; per the CDR of the cell number given by the Applicant, that was at the relevant time at the denim garment company where he worked, but that SIM was not registered in the Applicant's name. However, during an identification parade before the Magistrate, the witness Ghulam Shabbir identified the Applicant but not Shafqat Ali nor Ahmed Raza. Given the aforesaid, the I.O. placed the name of Ahmed Raza in blue ink in column 2 of the charge sheet and sent up Shafqat Ali and the Applicant for trial.

5. Mr. Raham Ali Rind, learned counsel for the Applicant submitted that the *alibi* taken by the Applicant had checked-out during investigation by verification from the Applicant's employer and by the CDR; that the Applicant had been implicated on the statement of the co-accused, Shafaqat Ali, to whom the learned VIII-Additional Sessions Judge, Karachi (East) had granted bail vide order dated 09-08-2019; and therefore the Applicant was entitled to the same concession on the ground of consistency.

On the other hand, Mr. Liaquat Ali Khaskheli, learned counsel for the Complainant submitted that the CDR was of no evidentiary

value as the SIM was not registered in the Applicant's name; that the statement of the co-accused, Shafqat Ali, shows the motive for the murder; and that the plea of *alibi* required a deeper appreciation and should be left to the trial Court; and that there was no reason to doubt the 'last seen' statement of the witness Ghulam Shabbir when he had identified the Applicant.

Mr. Sagheer Ahmed Abbasi, learned Assistant Prosecutor General submitted that the case of the co-accused, Shafqat Ali, was different as he had not been identified during the ID parade; therefore the rule of consistency was not attracted; and since it was a case involving capital punishment, the statement of the witness Ghulam Shabbir, carried weight when there was no reason to doubt the same.

6. Heard the learned counsel and perused the record.

The FIR was against unknown persons. The Applicant was implicated on the confession statement of the co-accused Shafqat Ali. That statement was made by him in police custody. It was not a judicial confession. For that very reason the learned trial Court had granted bail to the co-accused Shafqat Ali. True, that the witness Ghulam Shabbir had picked the Applicant during an ID parade as one of the persons last seen with the deceased, but then Ghulam Shabbir had failed to pick out Shafqat Ali and Ahmed Raza at the same ID parade. It is to be noted that the identification parade had taken place on 23-05-2019, after two months of the incident.

On the other hand, per the investigation report itself, the presence of the Applicant on duty at the denim garment company at the time of the incident was verified by his employer, and the CDR of the phone number given by the Applicant was also traced to be at the said denim garment company at the time of the incident. While the I.O. discarded the CDR on the ground that the SIM of the cell number was not registered in the name of the Applicant, nothing has been said to diminish the employer's verification that the Applicant was present on duty at the time of the incident.

7. With regards to the 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.”

8. Keeping in view the guideline of the Supreme Court in the case of *Zaigham Ashraf* discussed above, and on a tentative assessment of the circumstances discussed above, I am of the view

that notwithstanding that this is the stage of bail, the Applicant's plea of *alibi* cannot be ignored when there is nothing to suggest that the employer's confirmation of the *alibi* is doubtful. The 'last seen' account of the witness Ghulam Shabbir is a statement under section 161 Cr.P.C. and therefore does not come in the way of grant of bail when the Applicant has otherwise succeeded in bringing his case within the ambit of further enquiry within the meaning of section 497(2) Cr.P.C. There is nothing on record so far to show that the Applicant has a criminal history. The co-accused Shafqat Ali has already been granted bail by the trial Court.

9. In view of the foregoing, the Applicant is granted bail subject to deposit of 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 or further the case of either side at trial.

JUDGE

SHABAN/PA*