

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1909 of 2020
Criminal Bail Application No.1729 of 2020

<i>Date</i>	<i>Order with signature of Judge</i>
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For hearing of Bail Application.

23.02.2021

Mr. Tanveer-ul-Islam, Advocate along with Applicant Sharayar Shah and Fida Hussain (on bail).

Mr. Khadim Hussain Khuharo, Addl. Prosecutor General, Sindh along with SIO/P.I Saeed and ASI Siraj Ahmed of P.S Baloch Colony, Karachi.

ORDER

Muhammad Saleem Jessar, J:- By this common order, I will dispose of these two bail applications as the both arise out of one crime bearing No.482/2020 of P.S Baloch Colony, Karachi, under Section 337-A(i)/337-F(vi) PPC read with Section 324/392 PPC. The bail plea(s) preferred by the applicants before first forum were declined by means of orders dated 06.11.2020 as well as 07.12.2020. The case has been challaned by the police which is now pending for preliminary proceedings before the Court of 4th Judicial Magistrate, Karachi (South); hence these bail applications.

At the very outset, learned counsel for the applicants submits that applicants No.1 and 2 namely Abid Hussain Shah and Syed Sajid Hussain Shah (in Criminal Bail Application No.1729/2020) have been murdered by the complainant of this Case as well as others and to such effect FIR bearing No.101/2021 with P.S Saddar, Karachi under Section 302 PPC has been got registered by the applicant Shahryar Shah, in which complainant of present case is absconding. In support of his contention, he files photocopy of FIR as well as challan, same are hereby taken on record.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicants submits that no specific role or any overt act is assigned against these applicants except general role which is yet to be established by the prosecution after recording evidence of the parties. He next submits that in first investigation, challan was filed under section 324 & 392 PPC; however, in second investigation challan of the case has been filed under Section 337-A(i) & 337-F(vi) PPC. Next submits that punishment provided by the law for sections finally mentioned under the challan do not exceed limits of prohibitory clause of section 497 Cr.P.C. ASI Siraj Ahmed of P.S Baloch Colony, Karachi present, submits that he has submitted challan under Section 337-A(i) & 337-F(vi) PPC; whereas, has deleted sections 324 and 392 PPC as no concrete material was collected by him during investigation to constitute an offence under section 324 & 392 PPC.

Learned Addl. P.G, Sindh, in view of arguments advanced by learned counsel for the applicants and development in second investigation, very candidly concedes grant of pre-arrest bail.

Heard arguments and perused record. Admittedly, the parties are on strained relations over the previous litigation for which complainant himself has admitted in the FIR regarding motive; besides, the FIR is delayed for about 4 days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The complainant of this case after committing murder of co-accused Abid Hussain Shah and Syed Sajid Hussain Shah, is absconding, therefore, there is no likelihood of early commencement of trial. No specific role or any overt act has been assigned to both of the applicants and accusation whatsoever alleged against them is yet to be determined by the trial Court after recording evidence of the parties.

In the circumstances and in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of *KHALEEL AHMED SOOMRO Versus The STATE (PLD 2017 SC 730)*, case against applicants requires further inquiry within the parameters of sub-section 2 to section 497 Cr.P.C. Consequently, bail applications in hand to the extent of applicants Sharayar Shah and Fida Hussain are hereby allowed while bail application No.1729/2020 to the extent of deceased applicants Abid

Hussain Shah and Syed Sajid Hussain Shah has become infructuous, therefore, is hereby dismissed. Interim bail granted earlier to Sharayar Shah son of Abid Hussain Shah and Fida Hussain son of Qurban Hussain on 09.11.2020 and 10.12.2020 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

Office to place copy of this order in connected bail application.

JUDGE

Zulfiqar/P.A