

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2142 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

11.01.2022

Mr. Ameeruddin, Advocate for the Applicant.
Mr. Faheem Hussain Panhwar, Deputy Prosecutor General, Sindh.
Shaikh M. Mushtaque, Advocate for the Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Muhammad Javeed seeks his release on post arrest bail in Crime No.795/2018 of P.S Surjani Town, Karachi, under Section 302/34 PPC. The applicant was arrested by the police on 28.11.2018 and after completion of investigation, case was challaned, which is now pending for trial before the Court of Addl. Sessions Judge-X, Karachi (West) vide Sessions Case No.336/2019 (re-the State Versus Muhammad Javed). The bail plea preferred by the applicant before trial Court on the ground of statutory delay in conclusion of the trial was declined in terms of order dated 21.10.2021; hence, this bail application has been maintained.

2. Brief facts of the prosecution case as narrated in the FIR by complainant Muhammad Waseem son of Nano are that on 28.11.2018 at about 1250 hours, his sister namely Samia got information through phone call made by their brother in law (behnoi) Muhammad Javaid (present applicant) that the quarrel took place between him and his wife/their sister namely Samina (deceased) and he stabbed the knife to his wife/their sister Samina and she got injured and he was taking Mst. Samina to hospital and after some time, he again made phone call to Mst. Samia that their sister namely Mst. Samina succumbed to injuries and died as such his sister namely Samia informed him and after such information he went to residence of Mst. Samina where he found that his sister Samina was lying in dead condition. Meanwhile, he approached to P.S and lodged instant FIR. During course of investigation, the police arrested present applicant/accused and accordingly challaned the accused.

3. Mr. Ameeruddin, learned counsel for the applicant submits that the applicant is in custody right from the date of his arrest and more than three years have passed yet trial against him has not been concluded; besides, there is no eye-witness except the complainant/informant. He further submits that one cannot be kept behind the bars without progress in his trial, therefore, applicant deserves his release on bail on the ground of statutory delay/hardship. In support of his contention, he places reliance upon the cases of (i) *ZEESHAN alias SHANI Versus The STATE* (2018 MLD 563), (ii) *JALAL SHAH Versus NIAZ AKBER and 2 others* (2018 P.Cr.L.J 140), (iii) *ZAREEN MUHAMMAD and another Versus MUHAMMAD SHOAIB and another* (2019 P.Cr.L.J Note 50), (iv) *SARTAJ ALI alias MARU Versus The STATE* (2019 P.Cr.L.J Note 76), (v) *ZAHID HUSSAIN SHAH Versus THE STATE* (PLD 1995 Supreme Court 49), (vi) *SHABEER Versus THE STATE* (2012 SCMR 354), (vii) *IMTIAZ AHMED Versus The STATE through Special Prosecutor ANF* (2017 SCMR 1194), (viii) *ALI AKBAR Versus The STATE and others* (2020 SCMR 1225), (ix) *ASHIQ HUSSAIN alias MUHAMMAD ASHRAF Versus THE STATE* (PLD 1994 Supreme Court 879) and (x) *Rai MUHAMMAD RIAZ (deed) through L.Rs. and others Versus EJAZ AHMED and others* (PLD 2021 Supreme Court 761).

4. Learned counsel further admits that complainant of the case was examined before the trial Court on 17.11.2021; however, his cross was reserved at the request made by defense counsel on the ground that copy of post mortem notes were not provided to him.

5. On the other hand, Mr. Faheem Hussain Panhwar, learned Deputy P.G, Sindh, appearing for the State opposes the bail application on the ground that delay caused in conclusion of the trial is absolutely on the part of applicant/accused and no one else is responsible for causing such delay in conclusion of the trial. In support of his contention, he has referred to Page-93 and onward of the Court file and while pointing finger on the case diaries, submits that due to non-appearance of defense counsel, who remained absent on certain dates, trial could not conclude; hence, he opposes the bail application.

6. Shaikh M. Mushtaque, learned counsel for the complainant vehemently opposes the bail application on the ground that accused had committed murder of his wife brutally and is nominated in the FIR with specific role. He next submits that offensive weapon viz. knife through which he had committed murder of deceased Mst. Samina, was also produced by him during investigation, therefore, sufficient material has been brought on record to connect applicant/accused with commission of the offence. He next submits that deceased, at the time of death, had left five innocent children and the applicant/accused though is their father, did not think for

a while that he was going to cause murder of the mother of his children. He further submits that repeated injuries were caused which shows that accused had intention to remove the deceased and it was not an accidental death.

7. I have heard learned counsel for the applicant, learned Addl. P.G, Sindh as well as learned counsel for the complainant and have gone through the material made available on record.

8. Before parting with the order, it will be appropriate to go through progress report of the trial furnished by learned trial Court in compliance of order dated 17.11.2021. Perusal of the report reveals that charge against accused was framed on 14.09.2019 and after completion of codal formalities in terms of section 265-C Cr.P.C copies were supplied to the accused; however, when chief-in-examination of the complainant was recorded, counsel for the applicant/accused sought an adjournment on the ground that post mortem notes were not supplied to him. It will be appropriate to reproduce para-2 of the report which reads as under;_

"2. Perusal of record shows that after framing of charge, case was adjourned on so many dates and learned defense counsel did not appear in Court for about 15 dates though complainant and his counsel were present."

9. It appears that the accused is nominated in the FIR with specific role of stabbing knife to the deceased which resulted in her death. The offensive weapon viz. knife was also recovered from the accused during investigation. The PWs, who were examined by I.O of the case, have fully implicated the accused with commission of the offence. Per medical report, deceased had received sharp incised wound at mid of her abdomen measuring 2.5 x 1 cm deep and thus had also received many injuries on her person. The conduct of accused while committing offence is sufficient to hold that he has rightly been connected with the crime. As far as, his prayer to the extent of his release on bail on statutory delay is concerned, per available record, accused himself is responsible for causing delay in conclusion of the trial. Moreover, the offence with which applicant stands charged, carries capital punishment and no malafide or any ill-will as well as animosity has been urged against the complainant party by applicant/accused. Therefore, it will be appropriate for the applicant to proceed with the trial instead to press this bail application.

10. The plea taken by learned counsel for the applicant that he was not having post mortem notes, therefore, he sought adjournment, carries no weight. As per progress report, before framing of charge, accused was supplied all the documents

including post mortem notes in terms of section 265-C Cr.P.C and he might had provided the same to his counsel. The deposition produced by counsel for the applicant today, reveals that he had also implicated the accused with the Crime. The trial has commenced and accused is the only responsible for the crime, therefore, no case for interference is made out. As far as citations relied upon by the counsel are concerned, same have no relevancy as facts and circumstances of instant case are quite different from the cases cited at the Bar. All these things are sufficient to believe that applicant has prima facie been connected with commission of the offence and therefore he is not entitled for grant of bail. Consequently, instant bail application is hereby dismissed. However, the trial Court is directed to expedite the trial and conclude it within three (3) months' time, under intimation to this Court.

11. It is pertinent to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

12. The Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A