

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

Criminal Bail Application No.S-614 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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| | 1. For orders on office objections. |
| | 2. For hearing of main case. |

6.9.2021

Mr. Mehboob Ali Doongah, advocate for the applicants.
Mr. Safdar Ali Charan, Advocate for the complainant.
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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Date of hearing: 6.9.2021
Date of decision: 10.9.2021

ORDER

KHADIM HUSSAIN TUNIO, J:- Through instant criminal bail application, the applicant Azam Solangi seeks his admission to post-arrest bail in case emanating from Crime No. 24/2021, for offences punishable under sections 316 and 504 P.P.C, registered at P.S. A Section, Dadu. The applicant had earlier approached the learned trial Court with the plea to enlarge him on bail, however the same was declined by the learned Additional Sessions Judge-I Dadu, vide his order dated 16.07.2021.

2. It is alleged that on the day of incident, the deceased Saddam Ali was working at a Hotel, serving tea. The deceased's father (*complainant*) went to the said hotel to enjoy tea while meeting his brothers. When the deceased went to serve tea to the present applicant and co-accused Sajjan, who were also present at the said hotel, and demanded payment for the tea, on which the applicant was enraged and threw the cup of tea at the deceased, causing him to fall. Thereafter, applicant and co-accused started strangling him while also kicking and punching him when he was on the ground. The complainant, on hearing this, arrived to his son's aid and in the meanwhile, the applicant and accused ran away. Deceased Saddam Ali was found unconscious and transferred to Civil Hospital Dadu, but he had expired on the way there. Thereafter, the complainant appeared at the police station and lodged the FIR.

3. Learned counsel for the applicant has contended that the case against the applicant is fabricated, bogus and baseless; that the prosecution story is false and unbelievable; that there is an inordinate delay of 10 hours in the lodging of FIR and it has not been properly explained by the prosecution; that the only allegation against the applicant is that he threw the cup at the chest of the deceased and caused him to fall down, however the MLO has stated in the provisional and final post mortem report that no mark of violence is seen on the body except a scratch on the neck; that the actual cause of death of the deceased was in fact a heart attack, but the complainant manager this false story; that there is a dispute between the parties over matrimonial affairs due to which the complainant party dragged the applicant in this case falsely; that the place of incident is situated at a very busy place, but there are no independent witnesses of the alleged incident; that the alleged confession of the applicant before the police is not admissible as per Qanoon-e-Shahadat Order 1984, therefore the case of the applicant is one of further inquiry. In support of his contentions, learned counsel has cited the case law titled "*Jumma v. The State*" (2008 YLR 2306), "*Sanaullah Khan v. The State*" (2010 SCMR 608 and "*Shah Barat v. The State*" (2007 YLR 378).

4. Learned counsel for the complainant, while opposing the grant of bail to the applicant, argued that the applicant has been specifically named in the FIR with the role of throwing a tea cup at the deceased which knocked him down; that the delay, if any, has been explained by the prosecution; that the alleged broken cup has also been recovered from the place of incident to connect the applicant with the said offence; that the witnesses have supported the version of the complainant. He has cited the case law titled "*Zia Mehmood alias Mazhar v. The State and another*" (2012 PCrLJ 94) Learned Assistant Prosecutor General argued in the same line as argued by the counsel for the complainant while citing the case law titled "*Noor Baksh v. The State*" (2020 SCMR 1205).

5. I have heard the learned counsel for the respective parties and have gone through the record.

6. Although the applicant was initially charged with S. 302 PPC, the said section was later substituted with S. 316 PPC after obtaining opinion of the

prosecution. Admittedly, the name of the applicant transpires in the FIR promptly lodged by the complainant with the role that he had thrown a tea cup at the deceased which broke, causing the deceased to fall to the ground while allowing the applicant and co-accused Sajjan to cause kicks and punches to the deceased on various parts of his body in broad daylight. The complainant and P.Ws in their 161, Cr.P.C statements have fully implicated the applicant with the commission of the offence and sufficient evidence is shown to have been collected during investigation including the recovery of the broken cup. The delay in FIR, if any, has been fully explained by the complainant as well by stating that the deceased's post-mortem was being conducted at the Civil Hospital Dadu where the police had also arrived and after freeing himself by leaving the dead body with his brothers back home, the complainant appeared at Police Station and lodged FIR against the accused. Even otherwise, delay alone can never be considered as, if there are no other circumstances present, justifying the grant of bail. The co-accused in the present case, who is the brother of the applicant, has remained an absconder since the commission of the offence and therefore the apprehension of the applicant jumping bail and absconding cannot be ruled out either. S. 316 PPC provides a punishment of upto 25 years, and ultimately this case falls within the prohibitory clause of S. 497 Cr.P.C. There is no conflict between medical and ocular account and medical evidence is in the line of ocular evidence and the contention with regard to there being only neck injury on the deceased in the post-mortem report holds no substance at this stage as the same would be deeper appreciation of evidence which is not allowed at this stage. It is a settled principle of law that the court has to make tentative assessment while deciding the bail application and before recording of the evidence before the trial court and deeper appreciation of evidence is not permissible at bail stage, which may cause prejudice to the case of either party at the trial. In this respect, reliance is placed on the case law reported as *Bilal Khan v. The State through P.G, Punjab and another (2020 SCMR 937)*.

7. In view of above observations, I am of the considered view that only tentative assessment is required to decide this bail application and, *prima facie*, sufficient incriminating material is available on the record to connect the

applicant with the commission of the alleged offence. Hence, instant bail application being meritless is hereby dismissed.

8. Needless to mention here that the observations made here and above are tentative in nature and shall not in any way affect the merits of case of either party at the trial and / or influence the mind trial Court at the time of deciding the case finally.

JUDGE

Ali Haider