ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD
Criminal Bail Application No.S-163 of 2021

Date	Order with signature of Judge

For hearing of bail application

Mr. Khadim Hussain, advocate for applicant.
Mr. Poonjo Ruplani, advocate for complainant.
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

Date of hearing**:** **17.09.2020**
Date of decision**:** **17.09.2020**

O R D E R

KHADIM HUSSAIN TUNIO, J-Through instant bail application, the applicant Haree Ram seeks his admission to post-arrest bail in FIR No. 77/2020, registered at Police Station B-Section Tando Allahyar, under sections 302, 147, 148 and 149 PPC. Prior to filing of the present bail application, the applicant had approached the court of 1st Additional Sessions Judge, TandoAllahyarwith the same plea, which had been declined by the learned Judge, vide order dated 28.01.2021.

2. In nutshell, the accusation against the applicant Haree Ram is that he along with rest, with their common intention, on 14.09.2020, entered the clinic of deceased Lal Chand Bagri with sickle sharp cutting weapons, attacked him on various parts of his body which made him fall and then cut his neck, whereafter they left.

3. Learned counsel for the applicant has argued that the name of the applicant does not transpire in the F.I.R, nor was he assigned specific injuries; that the name of the applicant was disclosed in the supplementary statement which was recorded on 17.09.2020, after a delay of 3 days; that the witnesses of the incident are close relatives of the complainant; that the complainant initially lied in the FIR and implicated innocent people and then due to some enmity, falsely involved the present applicant as well; that the co-accused have already been admitted to bail; the accused that were nominated in the FIR were let off by the police during investigation of the case; that this is a case of more than two

versions; that the case of the applicant requires further inquiry. He therefore prays for the grant of bail to the applicant.

4. On the other hand, learned counsel for the complainant along with learned Assistant Prosecutor General, in one voice, have opposed the grant of bail to the applicant while arguing that the applicant was specifically mentioned in the supplementary statement; that the applicant committed brutal murder of the deceased; that the applicant, during interrogation, also produced the crime weapon. Learned counsel for the complainant, in support of his contentions, has cited the case law reported as ***PLD 2020 SC 523***.

5. I have given due consideration to the submissions of learned counsel for the parties and have perused the record available before me. Admittedly, the name of the applicant does not transpire in the F.I.R and it only came about in the supplementary statement of the complainant and PWs. There is a delay of 3 days in recording of the supplementary statement for which the prosecution has made no attempts to provide any explanation. It is a settled law that a belated supplementary statement has no value in the eyes of law, as established by the case law reported as ***Abid Ali alias Ali v. The State (2011 SCMR 161)***. Except the supplementary statement of complainant under Section 162 Cr.P.C, there is no evidence collected by the Investigating Agency despite the crime weapon which the applicant allegedly admitted to producing during interrogation, making the case of applicant that of further inquiry under section 497(2), Cr.P.C for the purpose of bail. The alleged recovered crime weapon *i.e. sickle* was recovered on 18.09.2020, after 4 days of the incident which is inconsequential at this time. Moreover, evidentiary value of supplementary statements with the possibility of a space to reconcile differences between the witnesses is an exercise that can be undertaken after recording of evidence at trial only. Reliance in this respect is placed on the case of ***Muhammad Jahangir Afzal v. The State and another (2020 SCMR 935)*** & ***Asfand Yar Khan v. The State (2020 SCMR 715)***. Moreover, it is also well settled principle of law that in a case calling for further inquiry into the guilt of an accused person, bail is to be allowed to him as a matter of right and not by way of grace or concession. In this respect, reliance is placed on the case law reported as ***Ikram-ul-Haq v. Raja***

Naveed Sabir and others (2012 SCMR 1273). Whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail and it would be better to keep him on bail than in the jail during the trial. Fortification is sought from the case of ***Syed Amanullah Shah v. The State (PLD 1996 Supreme Court 241).*** 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. Bail cannot be declined and the applicant cannot be kept into custody for an indefinite period as premeditated punishment. The investigation of the case is complete and he is no more required for further investigation. It is rather shocking for this Court to observe that the complainant initially lied in the FIR and went to the point where he implicated innocent people in the murder of deceased Lal Chand, per his verbatim. Then, three days later, he appeared before the police for recording of his supplementary statement, falsifying the FIR lodged on his word and implicated the present applicant. Such an act in itself is rather hard to believe and brings the case of the applicant within the purview of further inquiry. In the case of ***Haider Ali v. The State and others (2021 SCMR 629)***, it was observed by the Hon'ble Apex Court, in a case of somewhat similar nature, that:-

> "2. After hearing learned counsel for the petitioner, counsel for the complainant, learned Addl. Prosecutor General Punjab and having gone through the record we observe that although the FIR was chalked out on a written application of the complainant Faisal Jameel but name of the petitioner is not mentioned in the said FIR rather it is mentioned that the unknown person who fired four shots at Javed Bashir can be identified by the complainant if brought before him. Subsequently, the supplementary statement was recorded by the complainant who categorically stated that he identified the petitioner then and there when he made fire shots upon Javed Bashir deceased. This ***divergent stance of the complainant makes the case of the petitioner of further inquiry*** falling under subsection (2) of section 497 of the Criminal Procedure Code (Cr.P.C.). Hence, this petition is converted into an appeal and the same is allowed. The petitioner is released on bail subject to his furnishing bail bond in the sum of Rs.2,00,000/- (Rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the trial Court."

6. For the foregoing reasons, I, being of the opinion that the applicant successfully made out his case for the grant of post-arrest bail, granted him the same subject to furnishing solvent surety in the sum of Rs.500,000/- and P.R Bond in the like amount, vide short order even dated. These are the reasons for the same.

7. Before parting with the order, needless to add that the observations made in the bail, being based on tentative assessment of the material for the purpose of disposal of bail application only, will not influence the mind of the learned trial Court, which shall decide the case on merits by appraising the evidence strictly according to its merits on the available evidence.

J U D G E

Muhammad Danish Steno*