

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Bail Application No.S-40 of 2021

Applicant : Ali Sher Khoso through Mr. Ghulamullah Chang, advocate.

Complainant : Sajjan through Mr. Shueban Ali Mallah, advocate.

The State : Through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh along with SIP Ghulam Hussain Chandio and ASI Manzoor Ali of P.S. K.N. Shah.

Date of hearing : 27.08.2021.
Date of order : 27.08.2021.

ORDER

Through instant criminal bail application, the applicant/ accused Ali Sher seeks post-arrest bail in Crime No. 69 of 2010, under Sections 302, 324, 114, 147, 148, 149, 337-H(ii) and 504 PPC, registered at P.S. KN Shah, Dadu, after his bail plea had been declined by learned VIIth Additional Sessions Judge, Hyderabad vide order dated 09.12.2020.

2. The allegation against applicant is that on 15.02.2010, at about 0830 hours., he along with co-accused named in the FIR, being armed a Repeater, on accord of admitted enmity over land, attacked upon the complainant party and committed the murder of deceased Meehon with two straight fires from his Repeater who died on the spot, for which FIR was lodged by the complainant at P.S KN Shah Dadu on the same day at 1630 hours.

3. Learned counsel for the applicant contended that there are no grounds to believe that the applicant has committed the said offences alleged against him; that the prosecution story is false; that the FIR is delayed which suggests due deliberation and consultation before lodging the same; that the role assigned to applicant Ali Sher is doubtful; that Ali Sher was arrested in the year 2013 and has been languishing in jail ever since with no progress

with the trial; that co-accused have already been granted bail by this Court; that considering the shocking delay in the conclusion of trial, the applicant is entitled to bail. In support of his arguments, he has cited the case law reported as *2005 MLD 1270, 2008 SCMR 173, 2009 SCMR 299, PLD 2011 SC 178, 2012 SCMR 887, 2012 SCMR 338, 2014 SCMR 27, 2017 SCMR 279, 2018 MLD 745, 2019 PCrLJ Note 76* and *2020 SCMR 456*.

4. Learned counsel for the complainant while vehemently opposing the grant of bail to the applicant argued that the applicant has been named in the FIR with the specific role of causing the death of the deceased; that sufficient material is available on the record especially the recovery of 4 empties of 12 bore to connect the applicant with the alleged offence; that the case of the present applicant is distinguishable from that of the co-accused who have been granted bail already; that the applicant had remained an absconder and had been arrested nearly after 3 years of the incident on 17.05.2013 in connection of a different case; that since his surrender, the charge was amended hence justifying the delay in conclusion of trial so far. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicant while further arguing that the delay, if any, was not attributed to the prosecution and the applicant and his counsel themselves had caused delay in trial. In support of her contention, she referred the case law reported as *2020 SCMR 594* and *2020 SCMR 1198*.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. So far merits of the case are concerned, the applicant is nominated in the promptly lodged FIR that he alongwith co-accused being armed with a Repeater was seen by the complainant party while killing deceased Meehon. The complainant and P.Ws in their 161, Cr.P.C statements have fully implicated the applicant with the commission of crime and sufficient evidence is shown to have been collected during investigation including the 12 bore empties, which indicates after a tentative assessment that the

applicant committed the brutal murder of deceased Mehoon. Ocular version further finds support by the medical evidence. The abscondance of the applicant himself holds weight before this Court as well. In view of above, the applicant has no case for grant of bail so far merits of the case are concerned.

7. So far the ground of delay in conclusion of trial is concerned, perusal of the case diaries placed on record as well as the report furnished by the learned trial Court reflect that the charge has been amended multiple times by the learned trial Court on account of the arrest of co-accused and then due to the transfer of case from Dadu to Hyderabad. Then even, at one point of time the trial had proceeded during which all the PWs had been examined by the prosecution and the case was fixed for final hearing on 15.11.2017 according to case diaries however during this course, defence counsel remained absent on multiple dates which led to the delay. Afterwards, on 26.11.2018, the charge was amended yet again. Afterwards, co-accused Gul Baig was granted bail by the trial Court and he has reportedly jumped bail. In the present applicant's case, since he had already remained an absconder for 3 years after the incident, there is apprehension of his further abscondance after grant of bail as well and the Court does not feel satisfied in granting him bail. A thorough perusal of case diaries has shown the defence counsel being absent time and again; therefore the delay in trial in no way can be attributed to the prosecution. The case is now fixed for recording evidence of prosecution witnesses. Not to mention, the applicant has various other cases registered against him, hence being a habitual offender.

8. Accordingly, the instant bail application being without substance was dismissed through short order dated 27.08.2021. These are the reasons for the same. Before parting with this order, the trial Court is directed to pace-up the trial proceedings of the case by proceeding with it on day to day basis.

J U D G E