

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

Criminal Bail Application No.S-551 of 2021

Applicant : Haji Khan and Jumoon Khan through Mr. Pir Bux Bhurguri, advocate.

The State : Through Ms. Rameshan Oad, A.P.G, Sindh along with Dr. Waheed Ali Nahyoon, Dr. Qurban Ali Shah, Dr. Baldev and Dr. Tamheer Ali Shaikh.

Date of hearing : 13.09.2021.
Date of decision : 17.09.2021.

ORDER

KHADIM HUSSAIN TUNIO, J.- Through instant criminal bail application, the applicants/accused seeks their admission to post-arrest bail in Crime No. 158 of 2020, registered under Sections 302 PPC, at P.S. Husri/Pabban. Earlier, the applicants had approached the learned Vth Additional Sessions Judge, Hyderabad with the same plea, but it was denied vide order dated 26.06.2021.

2. It is alleged that the complainant was not on good terms with his uncles namely Haji Khan and Jumoon Khan (applicants) due to them having a questionable character and the complainant had refused to give the hand of his sisters to them. On 28.6.2019 at about 8:45 p.m., the complainant was returning from work when on his way, he met his sisters namely Dhano, Nasima, Guddi and Rahila. They disclosed to him that the applicants had climbed on their house's roof and after abusing them, threw bricks at them which had injured them, their mother and the sons of the complainant who were all sitting in their yard. The complainant reached home and took the injured for treatment, during which the son of the complainant namely Meer Hassan (5 years of age) expired away. After funeral processions, he filed a complaint before the Sessions Judge Hyderabad, whereafter pursuant to his order, the FIR was lodged.

3. Learned counsel for the applicants/accused has argued that the applicants are innocent and have been falsely implicated in the case; that nothing has been recovered from the applicants which connects them with the offence; that there are general allegations against the applicants and no specific role has been assigned to them; that all the witnesses are relatives of the complainant hence interested; that the prosecution has failed to explain as to which side the women were sitting and where the sons of the complainant were sleeping; that not a single brick was secured from the place of incident; that no one heard a cry from the complainant party even though they lived in a residential neighborhood; that the story appears false and fabricated and the complainant remained silent for a while; that the cause of death of the deceased was left undetermined by the medical board; that in fact the deceased had died of natural causes; that there is a delay of 2 months and 8 days in the lodging of FIR.

4. Conversely, learned APG vehemently opposed the grant of bail to the applicants while contending that all the PWs have implicated both the applicants in the commission of offence; that the delay was caused as police had refused to lodge the FIR of the complainant; that sufficient material is available on the record to connect the applicants with the commission of offence; that the applicants are charged with the commission of an offence carrying capital punishment.

5. I have heard the learned counsel for the respective parties and have gone through the record. A tentative assessment of the record pertains that the applicants have been nominated in the FIR, for causing injuries to deceased Meer Hassan and his mother and sisters on various parts of their body. The parties are known to each other, are neighbors and related therefore, the present case does not appear to be one of mistaken identity. As far as two or so months of delay in the lodging of FIR is concerned, not only has it been explained by stating that the police had refused to lodge the FIR but it has also been observed by the Hon'ble Apex Court in the case titled *Haji Guloo Khan v. Gul Daraz Khan and others (1995 SCMR 1765)* that no doubt, benefit arising from the delay in lodging the FIR goes to the accused, which **could be** taken into consideration **along with other circumstances**, while deciding the bail application, however delay in lodging of FIR alone is

never to be considered a circumstance which is sufficient for grant of bail in a case carrying capital punishment. The post-mortem report is irrelevant as it has only established that the cause of death was undetermined, it has not disputed nor observed that no death occurred or that it was natural. Even otherwise, getting into this discussion would be deep appreciation of evidence which is not permissible at bail 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, otherwise prejudice may be caused 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)*. Motive has also been furnished by the complainant party by disclosing that the hand of the sisters of the complainant was given to the applicants in marriage, but later the complainant party walked back on their words which made the applicants angry and led them to threaten the complainant of dire consequences. The ocular account furnished in the case has fully implicated the applicants in the commission of the offence to the extent that they climbed on top of the roof of the house of complainant and threw bricks down, injuring the complainant's mother, his sisters and his 5 year old son who later died during treatment. All the PWs have supported the version of the complainant as far as the involvement of the applicants is concerned in their 161 Cr.P.C statements. Sufficient material is available on the record to connect the applicants with the commission of the offence which carries punishment up to death.

6. More so, it is a settled principle of law that bail in cases of commission of non-bailable offences and particularly those falling within the Prohibitory Clause of S. 497 Cr.P.C. and carrying capital punishment is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry as alleged by the counsel for applicant, without keeping in view the entire provisions of Section 497 Cr.P.C. If bail is to be granted to every accused, even if charged with a non-bailable offence, without considering the merits of the case merely on the plea that every accused is presumed to be innocent unless proven otherwise, the very concept and purpose of drawing a line between bailable and non-bailable offences and various kinds of punishments, as prescribed by the law, shall stand frustrated. The discretion

vested in the Court is to be exercised in a judicial fashion and in the light of the facts of each case. Where the prosecution collects enough material to constitute a reasonable ground connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail.

7. For what has been discussed above, the applicants have failed to make out a case for grant of bail and therefore the instant bail application being meritless is 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.

J U D G E