

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

Criminal Bail Application No.S-402 of 2021

Applicant : Mubashir s/o Amanat Ali through M/s  
Khuwaja Azizullah and Ayatullah Khuwaja,  
advocate.

Complainant : Zahid Aslam through Mr. Deedar Ali Jarwar,  
advocate.

The State : Through Mr. Shewak Rathore, Deputy  
Prosecutor General, Sindh.

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

**ORDER**

**KHADIM HUSSAIN TUNIO, J.-** Through instant criminal bail application, the applicant/accused Mubashir seeks his admission to post-arrest bail in Crime No. 80 of 2019, registered under Sections 302 and 34 PPC, registered at P.S. B-Section, District Tando Allahyar.

2. It is alleged that the applicant, on 20.9.2019 at about 1700 hours, the complainant was informed by the applicant, husband of the deceased Mst. Fozia, about complainant's sister was not feeling well and he should come check on her. Hearing so, the complainant reached at the applicant's house, but was informed that his sister had been taken by the applicant to Hyderabad for treatment. After some time, the applicant called the complainant and informed him of his sister's death, whereafter the complainant saw her dead body and found various injuries on her right eyebrow and two fingers of the right hand. The complainant, being suspicious, entered the house of applicant and found his sister's room in ruin. After getting the post-mortem conducted and burial of the dead body of his sister, the complainant appeared at the police station and lodged the FIR against the applicant.

3. Learned counsel for the applicant/accused has argued that the applicant is innocent and has falsely been implicated in this case; that the FIR is delayed by almost a day without any plausible explanation; that the co-accused has already been enlarged on bail by this Court; that no material is available on the record to substantiate the charges levelled against the applicant; that no specific role has been assigned to the present applicant; that the deceased had died of natural causes, but the applicant was roped in the case due to enmity. In support of the contentions, learned counsel has referred the case law reported as *1984 PCrLJ 1433*, *2003 MLD 1610*, *2008 MLD 446* and *2018 YLR 728*.

4. Conversely, learned DPG assisted by learned advocate for complainant vehemently opposed the grant of bail to the applicant, *inter alia*, on the grounds that he is nominated in the promptly lodged F.I.R with specific role of the murder of deceased Mst. Fozia, sister of the complainant, and the medical evidence fully supports the ocular version; that the prosecution witnesses have fully supported the version of the complainant; that six injuries are available on the dead body of the deceased.

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 applicant has been nominated in the FIR along with his brother, for causing injuries to deceased Mst. Fozia and for poisoning her. The parties are known to each other and related therefore, the present case does not appear to be one of mistaken identity. As far as twenty-three hours delay in the lodging of FIR is concerned, not only has it been explained by stating that the complainant remained busy with the funeral proceedings and before that the post-mortem 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 also supported the version furnished by the complainant and PWs to the extent that there were injuries on the body of the deceased and blood was

also found on her body. Further, the chemical examiner's report found the presence of zinc phosphide in the body of the deceased which is a corrosive substance and resulted in the death of the deceased. Moreover, motive has also been furnished by the complainant party by disclosing that continuous dispute existed between deceased Mst. Fozia and her husband and brother who had time and again extended threats of dire consequences to her. The applicant was the head of the household and it would be reasonable to assume that he knew what went on his house and how poison was administered to his wife despite his presence. Instead of trying to look into her sudden death, however, he took her to the hospital, received the death certificate and was prepared to bury her. All the PWs have supported the version of the complainant as far as the involvement of the applicant Mubashir is concerned. Sufficient material is available on the record to connect the applicant with the commission of the offence which carries punishment up to death. As far as the contention that the applicant was not present at the spot is concerned, indulging in the same would be in-depth assessment of the record which is not permissible at this stage. Same goes for the 161 Cr.P.C statement filed by the mother of the applicant.

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. Per record, the co-accused Mudassir who is the brother of the applicant was also

granted bail, but after the same he jumped it. Therefore, it is reasonable to apprehend the same from the present applicant.

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