

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Bail Appln. No.1625 of 2021

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Date                                      Order with Signature(s) of Judge(s)  
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For hearing of bail application.

**16.02.2022**

M/s. Faran Sardar & Faizan Mansoor, Advocates  
for the Applicant.

Mr. Altaf Hussain Khoso, Advocate for the Complainant  
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh a/w  
PI-Muhammad Anwer of P.S. Pak Colony.

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**ZAFAR AHMED RAJPUT, J:-** Through instant criminal bail application, applicant/accused Hameedullah S/o Rehmat Ali seeks post-arrest bail in Crime No.57/2020 registered at P.S. Pak Colony, Karachi, under Section 324/34 R/W Section 302, P.P.C. His earlier application for the same relief in Sessions Case No.1030/2020 was heard and dismissed by the learned Additional Sessions Judge-XII, West-Karachi, vide order dated 24.11.2020. Subsequently the applicant preferred Crl. Bail Application No.2040/2020 before this Court which was dismissed as not pressed vide order dated 08.03.2021 with direction to trial Court to examine all material witnesses within a period of four months' time and conclude the trial under intimation to this Court. Thereafter, the applicant preferred another criminal bail application in said sessions case, which was also dismissed by the learned Additional Sessions Judge-XII, Karachi-West vide order dated 19.07.2021.

2. Learned counsel for the applicant contends that the applicant, who is a practicing lawyer, is innocent and has falsely been implicated in this case by the police; that there is inordinately delay of 05 hours in lodging of F.I.R. which the complainant has miserably failed to explain; that the complainant being the influential person falsely involved the applicant in commission of alleged offence with the connivance of investigating officer; that there are material contradiction in the deposition of witnesses recorded by the trial Court rendering the prosecution case against the applicant doubtful and the applicant is entitled to have benefit thereof at bail stage; that there is no recovery of 9mm pistol from the possession of the applicant which has in fact been foisted upon him; that the applicant has falsely been implicated in this case on account of a civil dispute

going on between the father of the deceased Sher Ali and the co-accused Umeed Ali and in respect thereof a civil Suit bearing No.141/2020 in which the applicant was counsel of the Umeed Ali pending adjudication; that there no direct or indirect evidence is available with the prosecution to connect the applicant with the commission of alleged offence; that the Court below failed to appreciate the spirit of law for grant of bail on “statutory delay” as the applicant is behind the bar since 19.03.2020. In support of his contention learned counsel has relied upon case laws reported as 2017 SCMR 1194, 2020 YLR Note 40, 2020 MLD 1944, 2020 MLD 883, 2019 YLR 626, 2018 YLR Note 227, 2018 YLR 716, 2018 MLD 601, 2014 YLR 628, 2013 YLR 1840, 2005 YLR 284 and 2005 YLR 310.

**3.** On the other hand, learned counsel for the complainant as well as Additional Prosecutor General oppose the grant of bail to applicant on the grounds that sufficient evidence is available with prosecution to connect him with the commission of alleged offence; that the contradiction in the deposition of witnesses recorded by the trial Court are minor in nature which can be attended by the trial Court while recording judgment; that the crime weapon was recovered from the possession of the accused immediately after occurrence and the same was sent to ballistic expert whose report is positive; that deeper appreciation of evidence at bail stage is not warranted by law. In support of their contention they have relied upon the case reported as 2011 SCMR 170.

**4.** Heard the learned counsel for the parties, Additional Prosecutor General and perused the material available on record.

**5.** It appears that complainant Fakhar-ul-Islam S/o Muhammad Shareef lodged aforesaid F.I.R., on 20.03.2020 at 0005 hours, with regard to the incident took place, on 19.03.2020 at about 2100 hours, wherein he has alleged that, on 19.03.2020, he received miscalls from Hameedullah (applicant) when he was going to home after offering Isha Prayer and he made contact with him who enquired from him as to who was in his home to which he (complainant) replied that his family, his cousin Sher Ali and his maternal uncle Abdul Ghafoor were present in home. It was further alleged that at about 2100 hours, applicant alongwith Umair S/o Umaid Ali and Umaid Ali S/o Ali Muhammad came in a vehicle at his house; the applicant started firing

inside home on that his cousin Sher Ali came out of a room and applicant fired on his abdomen and then he and other two accused persons run away. It further appears that injured Sher Ali was brought at hospital where he died. Police recovered three empties from the spot and sealed thereon under mashirnama. The applicant was arrested by the police on 20.03.2020 at 0130 hours from Mewa Shah Graveyard and recovered 9mm pistol which was sent to the office of Assistant Inspector General of Police Forensic Division, Sindh, Karachi for examination and it transpired from the report that 03 empties recovered by the police from the spot were fired empties of 9mm pistol allegedly recovered from the possession of the applicant.

**6.** So far the discrepancies in the deposition of witness(es) with regard to colour of deceased *Shalwar Kameez* and the *Shalwar Kameez* produced in Court and absence of hole mark on the backside of deceased shirt, as referred to by the learned counsel for the applicant, are concerned, the same can better be answered by the trial Court subsequently after evaluation of evidence.

**7.** As regards the “statutory delay”, it may be observed that the alleged offence is punishable with death and the applicant is confined in judicial custody since 20.03.2020 yet he has not completed his two years in judicial custody. The applicant shall be entitled to the grant of post arrest bail on statutory ground subject to fulfillment of requisite conditions.

**8.** The alleged offence being punishable for death or imprisonment for life or imprisonment upto twenty five years falls within prohibitory clause of section 497, Cr.P.C. The applicant is nominated in F.I.R. with specific role of causing fatal fire shot on the deceased and he has failed to make out any case of further inquiry. The case laws cited by the learned counsel for the applicant being on distinguishable facts, do not attract to the case of the applicant.

**9.** For the forgoing facts and reasons instant criminal bail application is rejected leaving the applicant at liberty to file fresh bail application before the trial Court after completion of two years in judicial custody on the statutory ground, if so advised. In case, such application is filed, the trial Court shall decide the same strictly in accordance with law.

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