

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

2nd Crl. Bail Appln. No. S- 322 of 2021.

Applicant: Ashfaq Ahmed son of Shah Nawaz Jakhrani, through Mr. Imtiaz Ali Mugheri, Advocate.

The State: Through, Mr. Muhammad Noonari, DPG.

Date of hearing: 30.07.2021.
Date of order: 02.08.2021.

ORDER

Adnan-ul-Karim Memon, J: -Primarily, impugned herein is the order dated 15.7.2021, whereby post-arrest bail was refused to the applicant by the learned Sessions Judge, Kashmore @ Kandhkot, in F.I.R No.07/2021, registered with P.S Rasaldar (*District Kashmore @ Kandhkot*) for offenses punishable under sections 302, 311 and 34 P.P.C. The applicant now has sought to this Court for post-arrest bail in the aforesaid crime.

2. Before filling the present Bail Application, the applicant's previous Bail Application No.177 of 2021 was dismissed by this Court vide order dated 28.5.2021. However, he has premised his case based on compromise application, based on affidavits of Mst, Parveen Khaton and Shah Nawaz both are the mother and father of deceased Mst. Savera, who was allegedly killed by the Applicant on 23.3.2021 in her house. Police registered such F.I.R of the incident promptly and arrested the applicant. His post-arrest bail plea was declined by the learned trial Court vide order dated 16.04.2021. He preferred a second bail application before the learned trial Court, which was also declined vide order dated 15.7.2021. Now he has again approached this court on the plea of compromise.

3. At the outset, I, asked the learned counsel for the applicant that he has to show fresh ground to seek post-arrest bail for the applicant as his earlier bail application has already been dismissed by this court.

4. Mr. Imtiaz Ali Mugheri Learned counsel for the applicant/ accused submits that the applicant/ accused is mistakenly nominated in the FIR by the police due to which the parents of the deceased Mst. Savera exonerated the applicant/ accused of the offense and has pardoned the applicant/

accused, and to this effect, he relied upon the affidavits of Mst. Parveen Khatoon and Shah Nawaz both are mother and father of deceased Mst. Savera (deceased). According to him, the parties intend to file a proper application for a compromise before the trial Court, but on account of certain reasons the compromise could not be filed. He added that the matter has been patched up between the parties which indicate the fact of compromise between the parties, therefore, the present applicant/ accused is liable to be admitted to bail. He further argued that the offenses falling under Chapter XVI of P.P.C. and mentioned in the schedule under section 345, Cr.P.C. even if committed in the name of "ghayrat" "Karo Kari", "Sayah Kari" and similar other customs, are compoundable and may be waived; that the parents of the deceased frankly contend that the offense in question was not in consequence of "Karo Kari" and 'siyakari', hence the applicant is entitled to post-arrest bail. The learned counsel further argued that the applicant has been falsely implicated in the case; that there is no reasonable ground to believe that the applicant/ accused has committed the offense of murder of her sister. He prayed for allowing the instant bail application.

5. Mr. Muhammad Noonari, learned DPG pointed out that section 311, P.P.C., has been inserted by the police in the FIR; that the said section provides punishment as Ta'zir for the offender and keeping in view the facts and circumstances, the principle of "Fasad-file-Arz" is attracted, as the murder of deceased was on the pretext of "Karo Kari" and 'siyakari', He further contended that it is a broad daylight murder of a young girl caused by her two brothers, hence the applicant is not entitled to the concession of bail at this stage. He pointed out that the Applicant filed Bail Application before this Court, and the said Bail Application was withdrawn as such this is a second Bail Application before this court is almost on the same ground. That the incident is of a heinous offense, punishable with Death and Life Imprisonment and the Deponents of Affidavits, who are father and mother accused, cannot be of any help to the Applicant at the bail stage.

6. Heard the arguments of learned Counsel for the Applicant, and learned DPG, who opposed the grant of bail to the applicant.

7. The prime question which falls for determination is as to whether repeating of bail application on the ground of affidavits of parents of deceased is permissible at the bail stage?

8. In the case of *Ali Sheharyar vs. The State* (2008 SCMR 1448) it was observed by their lordship that fresh bail application could be made at a subsequent stage on the ground which was not available at the time of filing of the earlier bail application. The Honourable Supreme Court in the case of *Ghulam Qammer Shah vs. Mukhtiar Hussain and others* (PLD 2015 SC 66), held that subsequent bail application could only be filed and entertained if the same disclosed any fresh ground for such relief, i.e., a ground which was not available at the time of the dismissal of the earlier bail application. The ratio of cases cited above is that when an earlier bail petition filed by an accused person is dismissed then the second bail application would only be maintainable if it is filed on the grounds, which were not available to him at the time of the dismissal of his first application.

9. To go ahead on the subject, it appears from the perusal of the material placed on record that deceased Mst. Savera, who was the sister of the applicant, was murdered in the house of her father where the applicant/ accused also resides and prime-facie allegations against him are that he along with his brother killed her on the pretext of "Karo Kari" and 'siyakari'. The specific role of causing the death of Mst. Savera has been ascribed to the applicant/ accused. It further appears that the Police have recorded the statements of Mst. Parveen Khatoon and Shah Nawaz both are parents of deceased Mst. Savera under section 161, Cr.P.C. both have categorically nominated the applicant/ accused in the commission of the offense. It also appears that soon after the commission of an offense, the police visited the place of the incident and such memo of site inspection was prepared on the spot and recovered certain articles, the deadbody was dispatched for postmortem. It transpires from the perusal of the postmortem report that the deceased died due to asphyxia and ligature marks were visible as a result of culpable homicide. The ocular as well as medical and circumstantial evidence available on the record, prima-facie connects the applicant/ accused in the commission of the offense.

10. The factum of filing of affidavits by the mother and father of the deceased Mst. Savera in favor of the applicant/ accused, speaks about the

contumacious conduct of the applicant/ accused, who has been found in a police investigation as an actual culprit of the murder of his real sister that he is making every effort to save his skin from the case. In the case of Nazir Ahmed V. The State reported in (PLD 1997 SC 347), the trend that eyewitnesses take somersault and give statements that are different from the prosecution case and file affidavit at the stage of hearing of bail application to create doubt in the prosecution case to enable the accused to get the bail was deprecated.

11. For the foregoing reasons, I am of the considered view that the applicant/ accused is not entitled to post-arrest bail at this stage. Consequently, the bail application stands dismissed.

12. The findings mentioned above are tentative which shall not prejudice the case of either party at the trial stage. However, the learned trial Court is directed to record evidence of the parties preferably within four (04) months and submit a compliance report, through the Additional Registrar of this Court within the stipulated period.

Judge

Ansari