

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 2228 of 2021

Applicant : Muhammad Iqbal s/o. Muhammad Hilal,
through Mr. Saadat Hassan Khan, advocate

Respondent : The State, through Ms. Rahat Ehsan, Additional
Prosecutor General.

Date of hearing : 25.01.2022

Date of order : 25.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Iqbal s/o. Muhammad Hilal seeks post-arrest bail in Crime No. 542/2020, registered at P.S. Pirabad, Karachi under section 302/34, P.P.C. His first application for the same relief bearing No. 5117/2020 was dismissed by the learned IInd Additional Sessions Judge, Karachi-West, vide order dated 30.01.2021, thereafter, applicant preferred Criminal Bail Application No. 611 of 2021 before this Court, which was dismissed for non-prosecution vide order, dated 09.06.2021.

2. As per FIR, on 16.10.2020 at about 1815 hrs., present applicant in furtherance of common intention, caught hold Umar Sahab, the brother of complainant Abid Saeed, and co-accused Muhammad Ilyas committed his *qatl-i-amd* by cutting his neck., for which, the accused were booked in the instant F.I.R.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case with mala fide intention and ulterior motives; that the complainant is not the eye-witness of the incident and has lodged the F.I.R. on hearsay basis; that there is delay of twenty-nine days in lodging of F.I.R. for that no plausible explanation has been furnished by the complainant; that as per prosecution story brother-in-law of the deceased was also available at the place of incident but neither he intervened in the matter nor lodged report of the incident; that the applicant has not been assigned any role for causing injury to the injured; that the applicant is confined in judicial custody since his day of arrest i.e. 14.11.2020 and police has submitted challan; hence, his custody is no more required by the police for further investigation; that the trial

of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; hence, the applicant is entitled for bail on the ground of further inquiry.

4. On the other hand, learned Addl. Prosecutor General has opposed the grant of bail to applicant on the ground that the applicant is involved in a heinous offence, who has been nominated in the F.I.R. with specific allegation of facilitating co-accused for causing injuries to the injured, who later on died; that the eye witnesses have implicated the applicant in their statements recorded under section 161 Cr.P.C.; that the delay in lodging of F.I.R. is satisfactorily explained; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled for the concession of bail.

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

6. It appears that on the fateful day, the deceased was standing along with his brother-in-law, namely, Siddique Akbar in front of his shop, situated adjacent to Rehmani Masjid, Rehmani Muhallah, Frontier Colony, Karachi when present applicant and co-accused Muhammad Ilyas, who was in intoxicated condition, came there and started abusing him and then present applicant caught hold the deceased and co-accused Muhammad Ilyas caused injury on his neck with some sharp thing, who started bleeding and was taken to Abbasi Shaheed Hospital from there to Civil Hospital, where he died after fourteen day during treatment.

7. There is a delay of twenty-nine days in lodging of F.I.R. Record shows that the brother-in-law of the deceased is the eye-witness, who being remained busy in treatment of the deceased could not lodge the F.I.R. The complainant resides in Swat, KPK, he reached from Swat and after death of his brother/deceased, he took his dead body to Swat for burial, and then he came back to Karachi and lodged the F.I.R. Under such circumstances, delay in lodging of F.I.R. appears to be well-explained. Even otherwise, the alleged delay is, ipso facto, no ground for the grant of bail to applicant, as prima facie there appears no element of deliberation and consultation in lodging of F.I.R.

8. It may be observed that vicarious liability for murder can be considered even at bail stage in the light of material on record. Accused found to be vicariously liable would be disentitled to bail in the absence of any reason showing his false implication. If from F.I.R. the accused appears to have shared common intention with his co-accused, who had caused the fatal injury, accused could be saddled with constructive or vicarious liability in such circumstances. In the instant case, the applicant is nominated in the F.I.R. for the commission of *Qatl-i-amd* of deceased Umar Sahab; he shared common intention with the co-accused Muhammad Ilyas for the commission of alleged offence.

9. From the tentative assessment of the evidence in hands of prosecution, I am of the view that prima-facie sufficient evidence is available against the applicant to connect him with the commission of alleged offence, carrying punishment for death or imprisonment for life. Hence, instant criminal bail application is dismissed, accordingly.

10. The above observations are tentative in nature for the disposal of the bail application and shall not influence the trial Court while deciding the case of the applicant on merits.

JUDGE

Athar Zai