

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1428 of 2022

Applicant : Dawood Khan son of Waheed Gul
Through Mr. Dur Muhammad advocate.

Respondent : The State
Through Mr. Khadim Hussain,
Addl. Prosecutor General, Sindh

Complainant : Arif Hussain Son of Abid Hussain through
Mansoor Ahmed Khan advocate

Date of hearing : 28.12.2022

Date of order : 28.12.2022

ORDER

ADNAN-UL-KARIM MEMON, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.354/2021 under Section 302/34 PPC, registered at PS Al-Falah after his bail plea has been declined by the learned V Additional Sessions Judge Karachi East (MCTC) vide order dated 19.07.2022.

2. The allegations against the applicant are that he on 18.7.2021 in connivance with his accomplice caused kicks and fist bellows to the brother of the complainant who succumbed to internal injuries and died during medical treatment at Jinnah Hospital Karachi, such report of the incident was lodged at PS Al-Falah, District Korangi, Karachi on 20.07.2021 after a delay of two days.

3. Brief facts of the case are that SIP Peer Muhammad received information from 15 police madadgar that the brother of complainant Asif Hussain was beaten to death by his friend on 18.07.2021 at 11:00 p.m. the injured was brought to Jinnah Hospital for medical treatment, but during treatment, he passed away, upon the said information. He reached Jinnah Hospital and met with MLO after permission conducted 174 proceedings after the postmortem collected the death certificate from MLO and after completing all legal formalities handed over the dead body to his real brother Arif Hussain and recorded his statement under Section 154 Cr.P.C.

4. Mr. Dur Muhammad learned counsel for the applicant has argued that to curtail the liberty of a person is a serious step in law, therefore, the

learned trial Judges ought to have applied judicial mind with deep thought for reaching a fair and proper conclusion albeit tentatively which he failed to do so, however, he added that this exercise shall not be carried out in vacuum or a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no preparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised in the course of granting or refusing to grant bail to an accused person, charge for offense (s), punishable with capital punishment. He next argued that the Courts are equally required to make a tentative assessment with a pure judicial approach of all the materials available on record, whether it goes in favor of the Prosecution or favor of the defense before making a decision. Learned counsel referred to the case in hand and submitted that no role has been assigned to the applicant rather entire role has been assigned to the brother-in-law of the deceased who allegedly acted all alone and the applicant has nothing to do with the alleged crime being stranger. Per learned counsel, the case of the present applicant / accused is of further inquiry and is not free from reasonable doubt, the benefit of which must go to the accused. He further submitted that from the contents of the FIR, it cannot be outrightly said that there was a common intention to commit the crime. It prima facie appears that merely showing presence at the spot is not a crime. The conclusion that there was a common intention if any can only be reached after the evidence in the matter comes on the record. So far as the role of causing injury to the person of the deceased is concerned, it is admitted position that the said injury was not attributed to the applicant. The applicant in this view of the matter cannot be kept behind the bars for an indefinite period.

5. Mr. Khadim Hussain, learned Addl. Prosecutor General, Sind Assisted by the learned counsel for the complainant has supported the impugned order passed by the learned trial court while rejecting the bail plea of the applicant. Learned counsel for the complainant has argued that on 18.07.2021 at 11:30 p.m. complaint saw that brother in law of the deceased namely Syed Shahbaz Ali Zaidi and his 2/3 companions including the applicant caused severe injuries to the deceased with a hard and blunt substance, however, he took away his injured brother to Health Care Hospital and after temporary treatment returned back to

the house, thereafter at night time deceased received serious pain in his abdomen, then his brother took him to Attia Hospital, wherefrom, he was referred to Jinnah Hospital Karachi for treatment where he succumbed to injuries and passed away. The applicant has been nominated specifically for the role of hitting the deceased with kicks and fist blows. The post-mortem report shows serious internal injuries on the body of the deceased. The learned counsel for the complainant has argued that the post-mortem report shows that the deceased died due to the aforesaid injuries; he referred to the portion of the post-mortem report and submitted that the medical report supports the ocular version as narrated by the complainant. He further submitted that all aspects of the case could be determined by the trial court after recording the evidence. He prayed for the dismissal of the instant bail application.

6. I have heard the learned counsel for the parties and have perused the material available on record.

7. The tentative assessment of the record reflects that the alleged incident took place on 18.07.2021 and the same was reported on 20.07.2021 after a delay of two days; the complainant disclosed in the FIR that 2/3 persons were fighting his brother and caused injuries to him, however, he succeeded to bring his brother at health care hospital for temporary treatment and thereafter left for the house, however, on the next day his brother felt pain in the abdomen who was brought at Attia Hospital for 2/3 hours thereafter to Jinnah Hospital where he succumbed to injuries and died, however, the accident and emergency department of JPMC prima-facie show that his brother was brought dead on 20.07.2021, however, it is yet to be ascertained whether he died during treatment or due to internal injuries caused during scuffling with accused persons, which factum needs to be looked into by the trial Court after recording evidence. At this stage, learned counsel for the applicant has referred to the statement along with the affidavit of the wife of deceased Asif (page 73), which shows that the deceased died due to a road accident. This factum needs to be looked into by the trial Court after recording evidence.

8. In view of the above factual position of the case, I am of the tentative view that the case of the present applicant calls for further inquiry in terms of Section 497(2) Cr.P.C.

9. For the aforesaid reasons, the applicant Dawood Khan is admitted to post-arrest bail in F.I.R No.354/2021 under Section 302/34 PPC, registered at PS Al-Falah, Karachi, subject to furnishing surety in the sum

of Rs.200, 000/- (Rupees Two Hundred Thousand) and P.R Bond in the like amount to the satisfaction of the trial Court. However, the learned trial Court is directed to record evidence of the complainant instantly.

10. Needless to mention here that the observations made hereinabove are tentative and shall have no effect upon the trial Court to decide the matter on merits.

JUDGE

Shahzad Soomro