

Order Sheet
IN THE HIGH COURT OF SINDH, AT KARACHI
Crl. Bail Application No. 2378 of 2022
[Muhammad Ismail s/o Akram Vs. The State]

Date	Order with signature of Judge
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Date of Hg: 18.01.2023

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Mr. Atta Muhammad Khan, Advocate a/w applicant/accused.
 Ms. Seema Zaidi, Additional Prosecutor General Sindh a/w IO M.A.
 Mirani.

Arshad Hussain Khan, J: The applicant / accused namely; Muhammad Ismail son of Akram, after rejection of his earlier application for grant of pre-arrest bail by learned Additional Sessions Judge-IV, East, Karachi, through instant criminal bail application has sought pre-arrest bail in Crime No. 2046/2022, registered under Section 320/337-G/427/279/322 P.P.C. at police station Korangi Industrial Area, Karachi. The Applicant was admitted to interim pre-arrest bail by this Court, vide order dated 08.12.2022, now he seeks confirmation of the same.

2. Briefly, facts of the case as narrated in the F.I.R. lodged by the complainant namely; Muhammad Shakir son of Abdul Aziz, are that on 29.09.2022, he was on duty when he received information through phone call that his son Muhammad Fahad along with his friend Nadeem has met with road accident. It is further stated that the caller told him to reach immediately to the Hospital so he rushed to Jinnah Hospital where he found that his son Muhammad Fahad aged about 19 years had been expired and after completion of the legal formality the dead body was shifted to Cheepa mortuary. It is also stated that his son's friend who received fatal injuries was under treatment. The complainant after burial lodged the FIR against the unknown driver for negligent and rash driving and killing of his son Fahad who was driving the Oil Tanker bearing registration No.JL-8849.

3. Learned counsel for the applicant/accused while reiterating the contents of the bail application has contended that the

applicant/accused is innocent and has falsely been implicated in the case with malice and ulterior motives. It is contended that actual position is that the applicant is the previous owner of the vehicle JP-8849, Oil Tanker, Model 1985 [subject vehicle] as he sold out the subject vehicle to one Ali Khan son of Nawab, through sale agreement dated 20.05.2022 and physical possession of the said vehicle was handed over to Ali Khan in presence of witnesses along with original title documents on the same date and time; the vendee also undertook that he will get the subject vehicle transferred in his name as early as possible. It is also contended that the main accused is the driver Ali Khan who is the owner as well as the driver of the vehicle and the present applicant/accused has nothing to do with the commission of offence as he is neither the owner nor the driver of the subject vehicle. He next argued that there is an inordinate delay in lodging of the FIR. He also urged that the name of the applicant/accused is neither appearing in the FIR nor any liability has been fixed nor any specific role has been assigned to the applicant/accused. There is no direct or indirect evidence available against the applicant. It is further urged that the facts narrated needs further inquiry and as such the applicant/accused is entitled for confirmation of pre-arrest bail.

4. Learned Addl. P.G. for the State has vehemently opposed the bail application and urged that the applicant/accused is not entitled for confirmation of bail in the present case.

5. I have heard learned counsel for the parties and perused the material available on the record as well as case law cited by learned counsel for the applicant/accused.

From perusal of the record, it appears that in the present case admittedly, neither the name of the applicant is appearing in the FIR nor any specific role of the crime has been assigned to the applicant. The complainant had lodged the FIR on receiving the information through phone call and he is not an eye-witness of the incident. Record also reveals that the applicant in the instant bail application as well as in his pre-arrest bail filed before the learned trial court annexed the sale agreement showing that he had entered into a sale transaction with one Ali Khan son of Nawab in respect of the subject

vehicle and further physical possession of the vehicle along with necessary documents was also handed over to the said Ali Khan (the vendee) on 20.05.2022, much prior to the date of incident. The accumulative effect of all these facts and circumstances, create reasonable doubt regarding truthfulness of the prosecution version. It is also established principle of law that benefit of doubt can even be extended at the bail stage. In this regard, reference can made to the case of *Syed Amanullah Shah v. The State* [PLD 1996 SC 241] wherein the Hon'ble Supreme Court of Pakistan, inter alia, has held as under:

“So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail then in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused”.

6. Besides above, vicarious liability of the present applicant or charges levelled against him could only be determined by the trial court after recording and evaluating the evidence. Reference can be made to the case of *Manzoor Hussain and 5 others v. The State* [2011 SCMR 902]. It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance. The accused was admitted to interim pre-arrest bail on 10.02.2022 and since then he is attending the trial court regularly and no complaint with regard to misusing the concession of ad-interim bail has been made by the complainant. Conversely, it was alleged that it is the complainant who is not pursuing the case before the trial court.

Keeping in view the facts and circumstances of the case, I am of the opinion that the case of the prosecution requires further inquiry as such the interim bail granted to the applicant/accused, vide order dated 18.02.2022, is hereby confirmed on the same terms and conditions.

7. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Bail Application stands disposed of.

JUDGE

Jamil***