

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-545 of 2022

Cr. Bail Application No.S-553 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

29.08.2022.

M/s. Muhammad Sachal R. Awan and Zafar Ali Leghari,
Advocates for applicants a/w applicants.

Mr. Muhammad Nasir Abro, Advocate for complainant.

Mr. Shahzado Saleem Nahiyoon, Additional P.G.

O R D E R

MUHAMMAD IQBAL KALHORO, J- Applicants, all police officials, posted at P.S Tando Bago on the day incident viz. 20.01.2022 riding two cultus cars and a motorcycle waylaid complainant and his brother Waseem @ Masood Ahmed (deceased), riding on a motorcycle and PWs Imran Jat and Faraz Talpur, on other motorcycle, a kilometer before Channel Wah Mori and severely beat Waseem. Applicant Bashir Ahmed Chandio, SHO P.S Tano Bago caused him lathi blow on his temple and co-accused Mehmood @ Kamando caused him blow on his back. Thereafter, they forced him to sit in the car and, before whizzing away, asked the complainant to pay Rs.500,000/- as ransom for his release. However, after covering some distance, when they reached channel wah mori, they threw Waseem into the wah within sight of the complainant party and went away. Complainant party tried to search Waseem in the wah but in vain, and continued searching him day in and day out till 24.01.2022, when body of deceased was found in the wah near village Achar Junejo and retrieved. It was taken to hospital for postmortem and in provisional medical certificate swelling on two parts of his body i.e. temple and back were spotted and recorded by

the Medico Legal Officer. The final postmortem certificate was issued on 17.03.2022 with the opinion that the evidence suggested that death of the deceased occurred due to asphyxia by drowning under the influence of alcohol. After postmortem, complainant approached P.S Talhar and got FIR registered against the applicants as stated above.

2. In the investigation, applicants were granted ad-interim pre-arrest bail, whereas, co-accused namely PC Ilmuddin and PC Niaz Ahmed were arrested. When they were produced before the Magistrate concerned for police remand, he holding the case triable by the Anti-Terrorism Court referred the matter to it. The applicants appeared there and sought ad-interim pre-arrest bail. They kept on appearing before the said Court until the case was again referred to the Court of ordinary jurisdiction vide order dated 06.04.2022 u/s 23 of ATA, 1997. Meanwhile, investigation was transferred to DSP CIA Center Hyderabad, who after conducting the same submitted the final report u/s 173 Cr.P.C, recommending the case for disposal under "C" class. But when such report was submitted before the Magistrate concerned, he disagreed and issued NBWs against the applicants. Apprehending arrest, applicants approached this Court challenging NBWs against them in a Criminal Miscellaneous Application. This Court vide order dated 21.04.2022 disposed of the application by converting NBWs into B.Ws and directed the applicants to appear before the trial Court and furnish surety. Meanwhile, an application for pre-arrest bail of applicant Anwar was dismissed by the trial Court, which has prompted the applicants to approach this Court directly for pre-arrest bail.

3. Learned Defence Counsel have submitted that applicants are innocent and have been falsely implicated in this case; the medical

evidence is in contradiction with the ocular account; no injury inflicted by applicants as alleged by the complainant was found on the person of deceased; swellings spotted by the Medico Legal Officer in provisional postmortem report after four days of the deceased remaining under water would not be said to correspond with the injuries attributed to the applicants; the case was registered against the applicants, all police officials, by the complainant party to save themselves for legal course as there is criminal record against them; the FIR is delayed for four days without any explanation. The co-accused, arrested during investigation, have been granted bail. Learned Counsel in support of their submissions have relied upon the cases of KHAIR MUHAMMAD and another v. The STATE (2021 SCMR 130), ZAMIR AHMED and 2 others v. The STATE (2016 YLR 2507), NAWAZ ALI JATT and another v. the STATE (2020 P.Cr.LJ Note 89), MUHAMMAD AKBER SAMOO and another v. The STATE (2000 P.C1.LJ 1473) and ZAMIR AHMED and 2 others v. The STATE (2016 YLR 2507).

4. On the other hand, learned Counsel for complainant and learned Additional P.G have opposed grant of bail to the applicants stating their names in FIR, which could not be registered because applicants are police officials. However, meanwhile, complainant party had staged protests against applicants for taking away deceased and throwing him into channel wah.

5. I have considered submissions of the parties and perused material available on record including the case law cited in defence. This case after investigation was disposed of by a senior police official under "C" class as medical evidence; postmortem report had established that the deceased had died due to asphyxia by drowning

under the influence of alcohol. In the column of remarks noting injuries, the Medico Legal Officer has mentioned that there is no any bruise or blood clots seen under the skin of scalp, corresponding to diffused swelling as mentioned in injury column. That prima facie means that swellings on the part of deceased noted by Medico Legal Officer were not the result of external injuries.

6. As FIR was registered only after the postmortem was conducted in which the swellings as noted above were recorded. An attempt seems to have been made by the complainant to notify the same injuries on parts of deceased as marked by the Medico Legal Officer in his provisional postmortem report. In investigation, the story narrated by the complainant was not established to justify referring the applicants to the Court for a trial. But learned Magistrate did not agree with it. No doubt, ipse dixit of the police official disposing of the case is not binding upon the Magistrate and he can take cognizance of the offence. But in such case he is required to record the reasons and refer to the material persuading him to disagree with the opinion of the I.O. But it is not the case here ostensibly. The trial Court too while dismissing bail application of applicant Anwar has simply referred to the fact that Magistrate has taken cognizance of the offence and delay in FIR is justified. However, no attempt to refer to the material available on record, the element of mala fide on the part of complainant etc. for deciding his entitlement to the bail has been made.

7. The medical evidence is in dispute with the story of FIR, mala fide on the part of complainant cannot be ruled out. The disposal of the case under "C" class is also a circumstance, which at this stage for bail to applicants can be considered in their favour. Besides, the

co-accused having been assigned, more or less same role, have been granted post arrest bail by the trial Court which order has not been challenged by the complainant. It is not scheme of the law to dismiss pre-arrest bail application of the accused, send him to jail and then release him on post arrest bail after some time.

8. Accordingly, and in view of the facts and circumstances as discussed above, these applications are allowed and ad-interim pre-arrest bail already granted to the applicants is hereby confirmed on same terms and conditions.

9. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE

Shahid

