

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-638 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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26.08.2022
For orders on office objection.
For hearing of main case.

Mr. Sajjad Ahmed Chandio advocate for the applicant.

Mr. Imtiaz Ali Channa advocate for complainant.

Mr. Muhammad Ali Noonari D.P.G. Sindh along with I.O. /DSP
Aurangzeb Abbasi.

Amjad Ali Sahito, J: - Through instant bail application, the applicant / accused namely, Izhar Ali son of Zulfiqar Ali seeks post-arrest bail in Crime No.12 / 2022 for the offence under section 302, 34 PPC registered at PS Kotri, District Jamshoro. Earlier bail plea of the applicant / accused has been turned down by learned Additioanl Sessions Judge-I / M.C.T.C Kotri vide order dated 17.05.2022.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly argued that the applicant / accused is innocent and has falsely been implicated in this case with *mala fide* intention; in fact, there is no relation of 'niece' of the Asif Ali with Zulfiqar Ali and others but subsequently, it has been managed by the complainant. He further contended that actually someother person has committed murder of deceased Asif Ali by declaring him as dacoit subsequently the applicant / accused has been implicated in this case. Learned counsel has also invited attention of this Court that the applicant has already made entry No.06 dated 13.01.2022 by Incharge at P.P. Khursheed on the information received from Control Jamshoro through official number viz. 022921367 that constable Izhar Ali Arain had informed that the criminals had entered in his house and such entry was kept by him. He further contended that first the police has also declared him as 'robber' but subsequently he was found innocent, however, applicant / accused has been implicated falsely. Learned counsel further contended that no specific role has been assigned

upon the applicant / accused and it is yet to be determined as to whether he has shared his common intention or not. He has added that there are two versions, which are yet to be determined as to which version is correct. Learned counsel has pointed out that there is unexplained delay of 13 hours in registration of FIR, without plausible explanation and unexplained delay of three months in recording statements under sections 161 Cr.P.C. of the witnesses. Learned counsel has contended that this is a case of further inquiry and prayed for grant of bail to the applicant / accused by relying upon the cases reported in 2011 SCMR 902, 2017 SCMR 279, 2021 SCMR 138, 2022 SCMR 547 and PLD 2021 Supreme Court 898.

4. On the other hand, learned counsel for the complainant submits that the deceased Asif Ali was close relative of the applicant / accused but he having some money as he he sold out agricultural land in the sum of Rs.30,000.00 and at that time Rs.80,000.00 were in his pocket, therefore, on this account the deceased was murdered by the applicant / accused and thereafter purportedly attempted to colour the incident by showing him as a 'dacoit'. He further contended that the applicant / accused Izhar given slap to the deceased. The applicant / accused has committed murder of deceased with preplanning and during investigation he has been found guilty of the offence, as such, he is not entitled for concession of bail. The learned Additional Prosecutor General Sindh supported the version of complainant and stated that this is a case under section 302 PPC and an innocent human has lost his life, as such, the applicant / accused is not entitled for bail.

5. The investigating Officer DSP Aurangzeb Abbasi is present on Court notice and states that after three months investigation was transferred, as such, the statements under sections 161 Cr.P.C. were recorded with such delay. He further stated that during investigation the CCTV recording was collected which shows that how the deceased Asif Ali was murdered by the applicant, therefore, the applicant / accused is not entitled for grant of bail.

6. I have heard the learned counsel for the parties and perused the record with their able assistance. The case of prosecution is that on 10.01.2022, deceased Asif Ali informed his younger brother Abbas Ali that he is going to Hyderabad for purchasing a new Car, as such, he will stay in the house of Izhar Ali and Zulfiquar Ali as wife of deceased Asif Ali is niece of Zulfiquar Ali. On 13.01.2022, he received information that his brother was murdered by applicant / accused Izhar Ali and Mumtaz Ali by showing him as a dacoit. However, from the face of FIR, it reflects that the deceased Asif Ali was close relative of the applicant / accused; and during investigation, it has surfaced and visualized that how the accused persons have committed murder

of deceased and slapped on his cheek. Sufficient material including CCTV recording video has come on record, which *pima facie* connect the applicant / accused in commission of the alleged offence. No enmity, illwill or *mala fide* has been brought on the record to believe that the accused has been booked in this case falsely. The complainant has explained for delay lodging of FIR. The offence is not bailable and carries the death penalty or imprisonment for life and it does falls within the ambit of section 497 (1) Cr.P.C. The case law relied by learned counsel is not applicable with the facts and circumstances of instant case. Accordingly, learned counsel for the applicant / accused has failed to make out a case for grant of bail, therefore, the instant criminal bail application is **dismissed**.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant / accused on merits.

JUDGE