

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.134 of 2023

Applicant : Waleed Hafeez @ Faheem Commando
S/o Hafeez-ur-Rehman
through Mr. Kanwar Altaf Bhatti,
Advocate

Complainant : Abid Ali S/o Qasim Abro
through Mr. Riaz Hussain Soomro,
Advocate

Respondent : The State
Through Syed Meeral Shah Bukhari, Addl.
Prosecutor General, Sindh

Date of hearing : 20.02.2023

Date of order : 20.02.2023

ORDER

AMJAD ALI SAHITO, J - Through this Bail Application, applicant/accused seeks post-arrest bail in FIR No.826/2020 registered under Sections 302/34 PPC at PS Sohrab Goth, after his bail plea has been declined by the learned Additional Sessions Judge-I/MCTC Malir, Karachi order dated 23.11.2022.

2. The details and particulars of the FIR are already available in bail application and the FIR, as such, need not to reproduce the same hereunder.

3. Per learned counsel, applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives; that eye witnesses were not present at the place of incident and as per CDR they were present at different places; that before registration of the FIR, a detailed inquiry was conducted which is against the law; that ocular evidence conflicts with the medical evidence; that the applicant/accused is behind the bar for last eight months and he is no more required for further investigation. Lastly, he prays for grant of bail to the applicant/accused.

4. On the other hand, learned counsel for the complainant and learned Addl. Prosecutor General, Sindh have vehemently opposed for grant of bail.

5. I have heard the learned counsel for the parties and have gone through the material available on record.

6. From perusal, it reflects that prior to this bail application, Crl. Bail Application No.2021 of 2020 was filed by the applicant/accused, which was dismissed vide order dated 14.07.2021 thereafter, the applicant/accused preferred an appeal before the Hon'ble Supreme Court of Pakistan being Criminal Petition No.128-K of 2021; however, after arguing at length, learned counsel appearing for the petitioner/accused did not press the said petition which was dismissed with further observation that the appeal was also barred by 55 days. Learned counsel for the applicant has almost agitated the same arguments which he argued in Crl. Bail Application No.2021/2020. However, from the face, it appears that a young boy namely Faisal aged about nineteen years old was present inside Masjid Hanfi Noor Khan Goth where present applicant alongwith co-accused entered in the Masjid duly armed with deadly weapons kidnapped Faisal from fourth row of the Masjid and fired at him, resultantly he died on the spot. The SDPO conducted the investigation and recorded statement of the independent persons namely Irfan, Muhammad Shoaib, Arshad Ali, Muhammad Asif, Badi-u-Zaman (Pesh Imam of the Masjid), Gul Hassan, Adam Ali Kumbhar, Bakhtiar Ali and they have all supported the version of the complainant. The ocular evidence finds support from the medical evidence. The name of the applicant/accused transpired in the FIR with specific role that he was also member of the raiding party, who had committed murder of one innocent boy. No enmity or ill will has been brought on record to believe that the applicant/accused has falsely been implicated in this case. Applicant/accused is charged for committing murder of an innocent person falls within the ambit of prohibitory clause of Section 497 Cr.P.C. At bail stage, only tentative assessment is to be made and a deeper appreciation of evidence is not required. Prima facie, sufficient material is

available on record to connect the applicant/accused with the commission of offence.

7. In view of the above, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application is dismissed. However, the learned trial Court is directed to expedite the matter and conclude the same preferably within three months from the date of receipt of this order and submit its report to this Court through MIT-II. It is made clear that no adjournment shall be granted to either party on flimsy ground.

8. 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 on merits.

JUDGE

Kamran/PA