

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2180 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

17-03-2023

Syed Iftikhar Ahmed Shah, Advocate for applicant.
Mr. Faheem Ahmed Panhwar, Addl.P.G. a/w I.O.

=====

Omar Sial, J: Abdul Samad Khan has sought post arrest bail in crime number 291 of 2018 registered under section 302 P.P.C. at the Pakistan Bazaar police station. Earlier, his application seeking bail was dismissed on 09.03.2022 by the learned 1st Additional Sessions Judge, Karachi West.

2. A background to the case is that the aforementioned F.I.R. was registered on 27.09.2018 on behalf of the State by A.S.I. Ahmed Ali Chandio. The complainant reported that he had gone to Qatar Hospital on the information that a dead body had been received there. He saw the dead body of an unidentified 20 to 25 years old person whose throat was slit.

3. It appears that a few days later, one man by the name of Rameez came to the police station and told the police that his brother Moiz was missing. Subsequently, he identified the body at the morgue as that of his brother. He further showed suspicion that Moiz's wife knew something about how he had died. Quarat-ul-Ain, Moiz's wife was summoned to the police station where she told the police that one of her husband's friend named Samad had come to their house and had intervened when Moiz was about to hit her with a "matami zanjeer". Samad had taken the chain from Moiz and hit him instead. He had then taken the injured Moiz with him. The applicant was therefore also arrested on the statement made by Quarat-ul-Ain.

4. I have heard the learned counsel for the applicant as well as the learned Addl.P.G.

5. I have gone through the section 164 Cr.P.C. statement recorded by Qurat-ul-Ain and apart from the fact that prima facie I find her account of what transpired to be unnatural it also does not reflect that Samad had killed Moiz. I also notice that in the very statement itself, Qurat-ul-Ain has said that she was beaten at the police station before she had given her statement. I am not satisfied at this stage that whatever she recorded before the magistrate was correct and true. It will also have to be seen whether the applicant can be held culpable. The veracity of her statement will have to be examined at trial. What I also find baffling at the moment is that the F.I.R. was registered on 27.09.2018 but the statement under section 164 Cr.P.C. shows that the magistrate has signed it on 08.09.2018. His signatures appear at 3 different places with the same date whereas on one page the signature of Qurat-ul-Ain has the date 08.10.2018 written next to it. The learned magistrate will have to be questioned at trial to clarify this glaring contradiction in the record. There are other material lapses that upon a tentative assessment seem to have also occurred in the recording of the said statement, however, I have restrained myself from making any comment on those at this preliminary stage. Suffice to say that Qurat-ul-Ain's statement certainly requires a further inquiry before the applicant can be held culpable.

6. Apart from her statement, the police claim that the applicant had also led them to a dirty pond where he had thrown the chain. The prosecution's claim seems illogical at the moment that the applicant, after hitting Samad with the chain, had taken an alive Moiz on his motorcycle by tying him up with his own body on the motorcycle along with the chain he had used to hit him. Then he stops the motorcycle somewhere and sees that Moiz is alive so hits him on the head several times before throwing him in a dirty pond of water. It is pertinent to point out that the medical report appears to show that there were no injury marks on the head of the deceased when his body was found.

7. In view of the above, the case against the applicant is one of further inquiry. He is admitted to post arrest bail subject to furnishing a solvent surety in the sum of Rs. 200,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE