

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1875 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

08-02-2023

M/s. Muhammad Haseeb Jamali and Ahmed Khan Khaskheli,
Advocates a/w applicant.

Mr. Zulfiqar Ali Shah, Advocate a/w applicant.

Syed Mehmood Alam Rizvi, Advocate for complainant in Crl.B.A.
No.1875 of 2021.

Ms. Naheed Akhtar holds brief for Mr. Muhammad Rafi, Advocate
a/w complainant in Crl. Misc. No.183 of 2022.

Mr. Talib Ali Memon, A.P.G. a/w PI Muhammad Ayub Pathan, I.O.

=====

Omar Sial, J: Rao Javed Iqbal has sought pre-arrest bail in crime number 285 of 2021 registered under sections 302, 109 and 34 P.P.C. at the Al-Falah police station. Earlier, his application seeking bail was dismissed on 23.09.2021 by the learned 2nd Additional Sessions Judge, Karachi East.

2. The aforementioned F.I.R. was lodged on 16.06.2021 on a statement recorded by one Zulfiqar Ali. He recorded that his elder son by the name of Mohammad Raza Zulfiqar was with him at his office for some time after which he proceeded to his own office in his vehicle. Zulfiqar was informed soon after Raza left that two unknown motorcyclists had fired on Raza's vehicle and that Raza had sustained injuries. Unfortunately, Raza succumbed to his injuries and his father suspected that 2 of his business rivals by the name of Mustafa Qureshi and Habib Ismail may have been behind the murder of his son.

3. It appears from what the counsels have argued that there existed extremely good terms for a substantially long time between the applicant Rao Javed Iqbal and the complainant's family. It is also an admitted fact that subsequently the 2 persons suspected by Zulfiqar to be behind the murders were also found not involved. The story had then taken a turn

towards 2 individuals Hamza and Hafeez, as being the persons behind the murders. The 3rd character who was also roped into the crime was a person by the name of Ajmal Papri. Ajmal Papri and Hamza were said to be hired assassins. The applicant was introduced as an accused in this case when Ajmal Papri during interrogation told the police that Hafeez had told Hamza (who has since been killed) and then Hamza had told him (Papri) that the applicant had agreed to pay 6 or 7 lacs if Raza was murdered. CCTV footage obtained during investigation reflected that it was Hamza who had fired upon Raza and that the person driving the motorcycle was Papri. The crime weapon was recovered from Papri.

4. The counsels for the parties as well as the learned APG all agree that the evidence against the applicant is as follows (i) a call data record which shows that Hafeez and the applicant spoke to each other (ii) statement of co-accused Papri in which he told Hamza that Hafeez had told him that the applicant will give money if Raza is murdered and (iii) a forensic report which show some chat messages between the applicant and either Hamza or Hafeez. Learned counsels have taken opposing views on the relevance and weight of this evidence. I have heard all the counsels and the learned APG. My observations and findings are as follows.

5. Only 2 entries have been shown to me on the call data record that the prosecution relies upon as evidence against the applicant which prima facie reflect that the applicant spoke to accused Hafeez twice. It is not surprising that he did as Hafeez worked as a salesman in the same business as the applicant's and the deceased. There is also an allegation that somehow or the other the call data record also shows an indirect and convoluted telephonic contact between Hamza and the applicant. Even then the prosecution has struggled to show to me clearly such a contact. Only one message exchanged between the applicant and Hamza has been read out to me by the prosecution, which message revealed absolutely nothing incriminating. Be that as it may, whether such evidence will even be admissible keeping in view the conditions stipulated by the Supreme Court of Pakistan in various cases will be determined at trial. Reference

may be made to the case of Mian Khalid Pervaiz vs. The State (2021 SCMR 522).

6. Statements of a co-accused may not per se be admissible in evidence. Even the statement of the co-accused relied upon by the prosecution against the applicant shows that it is a two-tiered statement i.e. Hafeez told Hamza who told Papri that the applicant will give money to murder Raza. At this preliminary stage the benefit of doubt in this regard may be given to the applicant.

7. What transpires before me at this stage is that Hamza and Papri were identified as the 2 shooters. 2 phone calls exist between the applicant and Hamza or Hafeez (I use the word "or" as the prosecution as well as the investigation officer appeared to be at a loss to explain the call data record obtained). One text message has been shown to me that the applicant sent to Hamza or Hafeez – which message in itself prima facie does not reveal anything.

8. The police did not have enough evidence to seek an arrest. If core human rights, of freedom and liberty, are permitted to be encroached upon so lightly it will ultimately result in discontent which will have far reaching consequences. Rao has rightly come seeking bail. On the evidence that the prosecution has, in my view he should not be permitted to be humiliated through jail at this stage. This observation does not mean that Rao is necessarily not guilty of the charges', however, his culpability has to be proved at trial. There are also traces of suspicion that the real story in this crime may have other aspects to it, which aspects perhaps will be explored at trial. I am unable to conclude at this stage that bail should not be granted.

9. Upon a tentative assessment of the evidence collected by the prosecution, it appears that the case of the applicant falls within the ambit of further inquiry. I am cognizant of the requirement of malafide in the grant of a pre-arrest bail. Learned counsel for the complainant spent considerable time in arguing that no malafide could be attributed to the

father of the deceased as till a very advanced stage the complainant had stated at all forums that the applicant was not guilty. I too, do not for a moment think that there was malafide on the part of the complainant. Having said that, I am not too sure about whether there was no malafide on the part of the police in misguiding a distraught father who had lost his young son in a horrifying and traumatic incident, so as to make him believe certain things. The evidence which the police had against the applicant, does not prima facie appear to be of such a nature where an arrest was justified. I am therefore unable to conclusively eliminate malafide at this preliminary stage.

10. I have given thought to the quantum of the bail bond. While Rao's culpability will be decided at trial, there exists no doubt in my mind that Rao is a key person in the whole episode. Also, the story of hired assassins is unsettling and must be taken seriously and requires exploration. On a tentative assessment it appears that the prosecution's allegations are not baseless by any standards. I am therefore inclined to set it at 2 sureties of Rs. 3 million each. The customary P.R. Bond shall also be taken.

11. The pre-arrest bail granted to the applicant is confirmed however subject to furnishing 2 solvent sureties in the amount of Rs. 3 million each and P.R. Bonds to the satisfaction of the Nazir of this Court. The surety should be deposited within 7 days failing which the concession of bail granted will be automatically cancelled.

JUDGE