

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1060 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

16-02-2023

Mr. Amanullah, Advocate for applicants.
Mr. Irshad Ali Shar, Advocate for complainant.
Mr. Abrar Ali Khichi, Addl.P.G.

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Omar Sial, J: Sajjad Ahmed has sought post arrest bail in crime number 320 of 2021 registered under sections 302, 324 and 34 P.P.C. at the Sukhan police station. Initially a charge under section 7 of the ATA 1997 was also included but the same was dropped at some later stage. Earlier, Sajjad Ahmed's application seeking bail was dismissed on 17.05.2022 by the learned 1st Additional Sessions Judge, Malir, Karachi.

2. One Jalal Khan on 01.08.2021 lodged the aforementioned F.I.R. reporting an incident that had occurred earlier that day. He recorded that he along with his uncle and cousins namely Arif, Jarra Khan and Mola Bux were standing and talking to each other when 2 vehicle, a Civic Car bearing registration number BCV-723 and one Alto Mehran emerged on the scene. 8 armed persons disembarked from the 2 vehicles. The complainant party identified 5 of the assailants whereas 3 remained unidentified. A serious incident of shooting seems to have then occurred which saw the assailants open fire on the complainant party. The applicant was specifically identified as shooting. As a consequence of the shooting Arif died whereas both Mola Bux and Jarra Khan were seriously injured.

3. Learned counsel for the applicant had argued that the eye witnesses cannot be believed; that the eye witnesses recorded their statements after 7 days of the incident; that the complainant party had also injured in shooting at the applicant party; the Tracker report shows that the vehicle

bearing number BCV-723 had remained switched off at the time the incident is said to have occurred; the call data record reveals that the applicant was not even present at the scene at the time the incident is said to have occurred and lastly that the empties recovered from the spot did not match the weapon seized from ostensibly the applicant. Learned counsel for the complainant and the learned Addl.P.G. have supported the order impugned. I have heard the learned counsels and the learned Addl.P.G. My observations and findings are as follows.

4. There are 3 eye witnesses in this case out of which 2 were themselves seriously injured in the shooting. There is no reason for them to specifically implicate the applicant in shooting and injuring them. There is a delay in the recording of the injured section 161 Cr.P.C. statements however at this preliminary stage I am not inclined to show any leniency towards the applicant on this account. It will have to be determined at trial after evidence is led as to whether the 2 injured witnesses were medically in a position to record statements in the interim period or not. The F.I.R. has been lodged with reasonable promptitude by the uninjured eye witness.

5. Although the learned counsel for the applicant argued otherwise, upon a tentative assessment the call data record appears to show the applicant was well within the vicinity of the place of incident. Learned counsel has stressed that the location of the applicant as identified in the call data record was nearly 4 kilometers away from the scene of the incident. Be that as it may, it is no hidden secret that mobile phone towers cannot pin point the location of a person using a phone. It would depend on where the towers are situated and what area do they cover. Going deeper into the call data records would amount to a deeper appreciation of evidence.

6. The Tracker report on record does indicate that the ignition of the vehicle was switched off at the time of the incident and a few days prior to that. The report which the learned counsel has put on file appears to have

been provided by him and it is yet to be seen as to whether it is admissible in evidence. The report further does not even prima facie reveal that it pertains to the same vehicle as was used in the crime as the registration number of the vehicle appears nowhere on the said report.

7. The learned counsel has also presented a convoluted argument to show that it cannot be determined as to who was the aggressed and who was the aggressor. Apart from the fact that this amounts to blowing hot and cold at the same time, as on the one hand the applicant claims he was not present on the spot while on the other he argues that it was the complainant party that was the aggressor, delving into the relationship that the parties have had, which is not clear from the record, would also amount to a deeper appreciation of evidence.

8. The offence with which the applicant is charged carries a potential capital punishment and this falls within the prohibitory clause of section 497 Cr.P.C. The prosecution appears to be in possession of evidence which on a tentative assessment appears to establish a nexus between the applicant and the offence complained of.

9. Bail application is dismissed.

JUDGE