

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2107 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

22-02-2023

Mr. Aamir Mansoob Qureshi, Advocate for applicant.

Mr. Uzair Ali Ghouri, Advocate for complainant.

Mr. Talib Ali Memon, A.P.G. a/w SIP Imtiaz Ali, I.O. of the case.

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Omar Sial, J. A young boy by the name of Yousha Rizwan went for a drive with his wife Areen on 27.06.2021. The couple stopped at a shop to have juice but did not like it too much thus placed an order at a fast food restaurant. While waiting for their food to be prepared, Yousha went to a medical store. When he returned to his car, he felt sick and collapsed. Yousha was taken to a hospital but most sadly, he expired. His father, Rizwan Shafiq was informed of the occurrence, who on 29.06.2021 lodged F.I.R. No. 808 of 2021 under sections 302, 337-J and 34 P.P.C. at the Gulshan-e-Iqbal police station. The F.I.R. was registered against unidentified persons at the 3 outlets that had been visited by the deceased and his wife.

2. 10 days after the registration of the F.I.R., on 09.07.2021, the complainant, recorded a further statement in which he disclosed that before the nikah ceremony of Yousha with Areen, Areen had asked Yousha to pick up a package for her which was ostensibly sent by the applicant from Lahore. The complainant cast suspicion on the applicant and handed over the phones of Yousha and his daughter-in-law Areen to the police the same day. The police after investigation recommended that the case be disposed of in "A" Class.

3. On 28.12.2021, the complainant yet again recorded a statement which to an extent was similar to the one recorded earlier on 09.07.2021; however, in this statement, the complainant further alleged that the

applicant had contacted one Nawaz Mehmood with the objective that Nawaz should have Yousha murdered. The record contains an anomaly in that the same phone i.e. that of the deceased, was once again shown to have been handed over by the complainant to the police. The applicant was however nominated as an accused in the case.

4. On 29.12.2021, yet another person by the name of Shakir Maqsood emerged who told the police that the applicant had sent a parcel for Areen, which parcel Shakir had handed over to Areen. It is this parcel which was said to contain the poison. The complainant also handed over a USB to the police claiming that it contained incriminating conversation between Areen and the applicant.

5. The applicant was arrested on 17.02.2022 and applied for bail before the learned 5th Additional Sessions Judge, Karachi East. The application was dismissed on 29.09.2022.

6. The learned counsel for the applicant has argued that the origins of the electronic data on which the prosecution relies are suspicious as the data does not contain the dates on which the messages relied upon were exchanged and that different memos of seizure of the telephone sets show different dates of seizure. He argued that the data presented by the prosecution has not been forensically examined as required by law. Learned counsel was also of the view that prosecution witness Nawaz, on whose statement the prosecution relies upon to implicate the applicant in the murder was nominated an accused but for reasons best known to the prosecution, he was made a witness in this case. Lastly, learned counsel has argued that the applicant has been charged under section 109 P.P.C. and that the case against the applicant is not covered by that section. The learned APG and the learned counsel for the complainant have supported the impugned order.

7. I have heard the learned counsel for the applicant as well as the learned APG who was assisted by the learned counsel for the complainant. My observations and findings are as follows.

8. I have given considerable thought to the case before me. Learned counsel for the applicant appears to be correct in his argument regarding the collection of the data on which the prosecution relies. The police record is contradictory in places and the same phone i.e. of the deceased, has been shown to have been taken in possession by the police on 2 different dates. Similarly, how the complainant came into possession of the electronic data is not clear. I have skimmed through the message exchange which is on record and prima facie it appears that apart from revealing a relationship existing between the applicant and the wife of the deceased, there are messages that prima facie seem to convey the desire of the applicant and the wife of the deceased to eliminate the deceased. The applicant also seems to have stooped to filthy levels in antagonizing the deceased viz-a-viz his (the applicant's) relationship with his wife to be. Prima facie motive is being established. According to the prosecution, it is also in possession of voice recordings that further implicate the applicant and which have been seized under a proper memo. A tentative review of the electronic data relied upon by the prosecution appears to show some cruel, mean and despicable messages sent by the applicant to the deceased. The despicability of those apparent texts also tilts the balance against the applicant.

9. I am saddened to see that the investigation in the case has not been up to mark. A seemingly casual approach has been taken by the investigators which has given rise to questions. I however feel that these are questions best answered at trial. I am not inclined to give any concession on this account at this stage.

10. Prima facie it appears that there is a question whether the material shown to me is admissible as evidence in accordance with the various principles laid down by the Honorable Supreme Court of Pakistan in various cases. But, that is an aspect to be explored at trial. Keeping all the circumstances in mind, I am not inclined at this stage to show leniency on this account, though it is an area I have considered. Upon a tentative

assessment it seems that the applicant has a case to answer for his involvement in the murder.

11. Notwithstanding the foregoing, what I find disturbing is that in an attempt to show that the deceased's wife and the applicant had a romantic affair, the complainant's counsel has put extremely intimate photos of the wife in the public sphere. This act of his and his client was inappropriate to say the least. The office is directed to seal the intimate screenshots on file and the same can only be opened with the permission of this court. Simultaneously, the counsels for both parties and the Prosecutor General's offices are also directed to remove the photographs from the public sphere.

12. Nawaz Mehmood claims to be a person who was contacted by the applicant to eliminate Yousha. He has recorded a section 161 Cr.P.C. statement in which he has detailed how the applicant had contacted him and then how that story unfolded. According to Nawaz and his brother they had convinced the applicant that they would arrange for the murder and for this purpose they had also taken money from him. Both witnesses however claimed that they had finally told the applicant that the work cannot be done. Nawaz is an employee of the Pakistan Army. Learned counsel for the applicant has drawn my attention to a letter written by the police which reflects that the police sought the presence of Nawaz because of his involvement in the present crime. This is the letter that has been relied upon by the learned counsel to demonstrate that Nawaz was initially made an accused in the case. This very well may be the case but the letter in question does not make it clear whether Nawaz was being treated as an accused as the words used in the letter are "his involvement in the case"; of course, if Nawaz is to be believed, his extensive planning with the applicant to eliminate Yousha makes him a character who by all means was involved in the case. I also see little reason as to why Nawaz, a person in Lahore, would falsely implicate the applicant in the murder. No malafide or ill-intent on his part for a false implication has been argued by the learned counsel nor is any borne out from the record upon a tentative assessment.

13. With much respect, I am unable to agree with the learned counsel for the applicant that the case against the applicant does not fall within the ambit of section 107 P.P.C. and thus is not punishable under section 109. A mere reading of section 107 P.P.C. shows prima facie that a person abets the doing of something who intentionally aids, by any act or illegal omission, the doing of that thing. In the current case the allegation against the applicant is that he purchased the poison and sent it to the wife of the deceased, which poison was then administered to the deceased and was the cause of his death. Suffice to say at this stage that he does have a case of aiding and abetment to answer.

14. What I have also considered at this stage is the likelihood of the applicant influencing witnesses in this case. If Nawaz is to be believed, he and the applicant shared a close relationship. Nawaz is the key witness as far as the case against the applicant is concerned. At the moment there is not much on record to show that it was not a close relationship and hence the possibility of influence.

15. I am of the opinion that the prosecution has established enough of a nexus between the applicant and the crime in order for me to deny him bail. This does not mean that the applicant is guilty of the crime. That is a matter for the learned trial court to determine after it has had an opportunity to evaluate the evidence produced before it.

16. The deceased was a young boy and both the accused are also young people. It would be appropriate in the circumstances, while dismissing the bail application, that directions are given to the learned trial court to use its best endeavors to conclude the trial within a maximum period of 6 months. As far as the applicant is concerned, he may repeat his bail application after Nawaz has been examined at trial.

17. Bail application stands dismissed.

JUDGE