

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1207 of 2023

Date	Order with signature of Judge
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For hearing of bail application

23.8.2023

Mr. Zahid Iqbal advocate for the applicant
Mr. Muntazir Mehdi, Additional PG alongwith SI/IO Darya Khan PS
Sachal Karachi, Nusrat Shaikh DSP Sachal Karachi and SIO Ahmed Ali
Shah, PS Sachal Karachi

Through this bail application under Section 497 Cr.P.C., the applicant Naik Muhammad has sought admission to post-arrest bail in F.I.R No. 1267/2023, registered under Section 302 PPC at P.S Sachal, Karachi. The earlier bail plea of the applicant has been declined by the learned 11th Additional Sessions Judge (Malir) Karachi vide order dated 03.02.2023 in Cr. Bail Application No. 4119/2022, on the premise that the accused is nominated in the FIR and recovery of crime weapon has been made on his pointation.

2. The accusation against the applicant as set out in the F.I.R No. 1267/2023 is that he caused the death of the nephew of the complainant namely Kamran son of Abdul Latif Chandio aged about 22 years, Such report of the incident was given to P.S Sachal, Karachi, and thereafter the case was lodged against the applicant under Section 302/34 PPC.

3. Learned counsel for the applicant has submitted that the alleged incident took place on 18.07.2022 whereas reported to the police on the second day i.e. 19.07.2022 at 1140 as such there is an inordinate delay in lodging the FIR. He has further contended that during the investigation the I.O has failed to collect a single piece of incriminating material against the applicant. He next contended that the deceased was involved in criminal activities which factum disclosed in the charge sheet and nobody knows who allegedly killed him; however, police implicated the applicant in a blind case with malafide intention. He has further contended that the alleged crime weapon i.e. churri has not been effected from the possession of the applicant at the time of his arrest and the present case is doubtful and certainly requires further inquiry as contemplated under Section 497(2) Cr.P.C. He has contended that the deceased of the case namely Kamran son of Abdul Latif was involved in so many FIRs of different

police stations of PS District Qamber Shahdadpur and he had enmity with local people. He lastly prayed for allowing the bail application.

4. Learned APG assisted by the Investigating officer of the case has supported the bail declining order passed by the learned trial court and submitted that there are no reasonable grounds exist to believe that it is a case of further inquiry. Learned APG also submitted that the name of the accused is mentioned in the FIR and the crime weapon was recovered on the pointation of the accused. He has further contended that there is no enmity of the complainant with the accused to falsely implicate him in this case.

5. I have heard learned counsel for the parties and perused the material available on record. Though the complainant has been served he has chosen to remain absent. However, on his behalf learned APG has pleaded his case and opposed the request of the applicant for post-arrest bail.

6. There is no cavil to the proposition that in the case of a single accused substitution is a rare phenomenon; however, it cannot equally be denied that a charge against a single accused will not absolve the prosecution of its liability to prove the case through trustworthy and confidence-inspiring evidence.

7. Tentative, scanning of the record reveals the following position of the case:-

- a) *That as per the prosecution version, the occurrence is unseen, however allegedly occurred on 18.7.2022 near Shar Village Scheme 33 Krachi, situated within limits of P.S Sachal, unfortunately No one amongst the area people was cited as a witness to have seen the alleged occurrence of murder of deceased namely Kamran son of Abdul Latif and complainant just uttered the word in the F.I.R that he came to know that applicant had caused the death of deceased without source of information, which is prima-facie hearsay evidence.*
- b) *There is no mention of the circumstances, in which the complainant came to know that the accused/applicant, was involved in this case.*
- c) *Prima facie, the accused was arrested in a blind case by police without any pointation of the complainant, therefore, an identification parade was required in the case, since FIR was blind the complainant was not an eye-witness of the incident and there was no relationship between the parties; and failure thereof, the benefit of the doubt goes to accused at this stage.*
- d) *The accused has been in jail for the last more than a year and the only charge has been framed. The innocence and guilt of the applicant are yet to be proved before the trial court.*
- e) *The postmortem report, prima facie suggests the name of the deceased as Sarfraz Ahmed son of Koral, whereas the complainant has disclosed the name of the deceased as Kamran son of Abdul*

- Latif and it is yet to be ascertained, who identified the dead body and took away the same for burial.*
- f) *Prima facie no private person as well as the relative of the deceased had come forward identifying the dead body of the deceased whether he was Kamran Ahmed son of Abdul Latif Chandio or Sarfraz Ahmed son of Koral. This factum requires further inquiry in terms of section 497 (2) CR.PC.*
- g) *It is surprising that the Investigating Officer failed to record the statement of the complainant about the identification of the dead body of the deceased. Even though he alleges that the crime weapon i.e. Churry was recovered, however, he failed to send the same to the forensic laboratory whether the same stained with human blood or otherwise, this factum also requires further inquiry in terms of section 497 (2) CR.PC.*
- h) *The prosecution has yet to establish the alleged motive before the trial court as the parties were not in a blood feud. In such circumstances, the golden principle of justice would come into play that even a single doubt if found reasonable would be given to the accused at the bail stage because a bundle of doubts is not required to extend the legal benefit to the accused.*
- i) *Prima facie, the deceased was involved in many cases as per copies of F.IRs placed on record.*

8. The Supreme Court in a recent judgment has held that at the bail stage, the Court is not to make a deeper examination and appreciation of the evidence collected during the investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question of whether or not there exists reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused.

9. From the tentative assessment of the evidence in the hand of the prosecution, it appears that a mere accusation of an offense of murder has been attributed against the applicant based on suspicion, which would not be sufficient to disentitle the applicant from being bailed out. The prosecution has to establish reasonable grounds" as distinguished from mere allegations or suspicion, however, they failed to point out any reasonable ground to withhold such relief, while it is yet to be determined if the applicant is involved or not, which is possible only after the recording of the evidence by the trial Court. On the aforesaid proposition I am guided by the decisions of the Supreme Court in the cases of *Hakim Ali Zardari versus State* (PLD 1998 Supreme Court 1), *Zaigham Ashraf v. State and others* (2016 SCMR 18), *Chaudhry Shujat Hussain v. The*

State (1995 SCMR 1249), Alam Zeb and another v. State and others (PLD 2014 S.C. 760), Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738) and Resham Khan Vs.The State (2021 SCMR 2011).

10. In view of the peculiar facts and circumstances of the case, I am of the tentative view that prima facie, the applicant/accused has succeeded in bringing his case within the purview of further inquiry and as such is entitled to bail in the subject crime.

11. In view of the above the bail application is allowed. The applicant is granted bail in case F.I.R No. 1267/2023, registered under Section 302 PPC at P.S Sachal, Karachi, subject to furnishing surety to the tune of Rs.100,000/- (Rupees One hundred thousand) and PR of the like amount to the satisfaction of the trial court.

12. Needless to mention here any observation made in this order is tentative and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that if, during proceedings, the applicants/accused misuses the bail, then the trial Court would be competent to cancel the bail of the applicants/accused without making any reference to this Court.

JUDGE