

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

Criminal Bail Application No. 1532 of 2023

Date	Order with signature of Judge
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For hearing of bail application

**11.8.2023**

Mr. Shaikh Saqib Ahmed advocate for the applicant  
Mr. Arsalan Naeem & Shaikh Faraz Ahmed advocate for the complainant.  
Mr. Siraj Ali Khan, APG

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Through this bail application under Section 497 Cr.P.C., the applicant Shan Saleem has sought admission to post-arrest bail in F.I.R No.09/2023, registered under Section 365/34 PPC, lodged at Police Station Sahil Karachi South. During the investigation Section 201, 202, and 302 PPC were added to the charge sheet by the Investigating officer, However, the learned Magistrate discharged co-accused Mst. Aradhna under Section 63 Cr.P.C., vide order dated 21.1.2023. The bail plea of the applicant has been declined by the learned Additional Session Judge-II, Karachi South vide order dated 18.04.2023 in Criminal Bail Application No.15/2023.

2. The accusation made by the complainant in the F.I.R against the applicant is that on 06.1.2023, he in connivance with his accomplices abducted her daughter namely Sara Malik, and caused her death by throwing her dead body at Sea Shore Sahil Venue Phase VIII DHA Karachi and all accused destroyed the available evidence; such report of the incident was given to Police Station Sahil Karachi South on 08.1.2023 who lodged the F.I.R against the applicant and his accomplices. Police recovered her dead body from the seashore; her postmortem was conducted on 08.1.2023, and chemical reports, as well as DNA reports, were collected, finally, the Medical officer opined the cause of death as asphyxia due to inhalation of seawater, leading to irreversible cardiorespiratory failure and subsequent death of the lady.

3. Learned counsel for the applicant/accused contends that the applicant/accused is innocent and has falsely been implicated in this case by the complainant. He further contended that the FIR is delayed, for which no plausible explanation has been furnished by the complainant; that the deceased had committed suicide but the same has been turned by the complainant as a case of culpable homicide, hence malafide is on the part of the complainant to falsely implicate the

applicant/accused; that no direct or even circumstantial evidence is available with the prosecution to establish the alleged commission of murder; he next argued that neither there is ocular testimony regarding the cause of the murder of the deceased and causing it by the applicant nor there is medical evidence to ascertain whether the death of deceased was unnatural; he next submitted that complainant is not an eyewitness of the occurrence; that no one from the public/people has come forward to substantiate the version of the complainant; that medicolegal report/DNA report does not show any bruises, scratches or signs of violence on the body of deceased. Learned counsel argued that the learned trial Court has also granted bail to co-accused Mst Bisma vide order dated 03.4.2023 and submitted that it is well-settled law that the rule of consistency is to be adjudged from the role played by each of the accused at the time of the commission of the crime and not from that accused is nominated or not in the FIR, hence, the applicant is also entitled to grant of bail under the aforesaid principle; that charge was framed on 03.5.2023 and still the trial has not been commenced and the applicant is in continuous detention with effect from 07.1.2023 without trial. He further submits that this is a good case of hardship suffered by the applicant on account of delay which is quite obvious and the same could not be overlooked by this Court as such no purpose would be served to keep the applicant in jail for an indefinite period. Learned counsel emphasized that the Courts are equally required to make a tentative assessment with a pure judicial approach of all the materials available on record, whether it goes in favor of the prosecution or the defense before making a decision, however, the trial Court has ignored this principle and refused post-arrest bail to the applicant without assigning a reason. He next argued that for purposes of bail, the law not be stretched in favor of prosecution even if the benefit of the doubt, if any arises, must go to the accused even on bail stage.

4. On the other hand, learned APG assisted by the learned counsel for the complainant vehemently opposed the bail to the applicant and submits that the name of the applicant/accused transpires in the FIR with the specific allegation that he has murdered her daughter. The delay has been properly explained by the complainant and this is a heinous case of murder. He next argued that the applicant destroyed DVR and CCTV cameras installed in his office; however, some data has been recovered. Learned counsel contended that alcohol was detected from the body of the deceased as per the medical report and the applicant is involved in the commission of the offense; that the alleged offense being punishable by death falls within the prohibitory clause of Section 497 Cr.P.C. Any

defense plea or hypothetical question which could imagine, would not make it a case of further inquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence. He next argued that when the charge had already been framed, and trial had already been commenced, the judicial propriety demands that direction may be given to the trial Court to at least examine the medical officer to ascertain the actual cause of death of the deceased and on that principle, bail could be refused; he further submitted that at the bail stage, corroboratory piece of evidence if missing, cannot discard the circumstantial/ocular account recorded on the day of the occurrence. Learned counsel representing the complainant has submitted that during the investigation, the finding of the Investigating Officer is that the applicant used to satisfy his sexual lust by deceiving young girls for the job in his hospital which act was ultimately retaliated causing the death of the deceased lady, therefore the applicant is not entitled to concession of bail at this stage.

5. I have heard learned counsel for the parties and perused material available on record.

6. Tentative assessment of the record reflects the following aspects of the case, which prima facie determine the fate of the present bail application:-

- a) *Alleged offense occurred on 06.1.2023 and was reported after two days i.e. 08.1.2023.*
- b) *The learned Magistrate discharged co-accused Mst Aradhna under Section 63 Cr.P.C., vide order dated 21.1.2023.*
- c) *Police recovered the deceased's dead body from the seashore; her postmortem was conducted on 08.1.2023, and chemical report, as well as DNA reports, were collected, finally, the Medical officer opined the cause of death was asphyxia due to inhalation of seawater, leading to irreversible cardiorespiratory failure and subsequent death of the lady.*
- d) *That medicolegal report/DNA report does not show any bruises, scratches, or signs of violence on the body of the deceased.*
- e) *Prima facie no direct or even circumstantial evidence is available with the prosecution to establish the alleged commission of murder of the deceased neither there is ocular testimony regarding the cause of the murder of the deceased nor there is medical evidence to ascertain whether the death of deceased was unnatural;*
- f) *Learned trial Court has also granted bail to co-accused Mst Bisma vide order dated 03.4.2023.*
- g) *Complainant is not an eyewitness of the occurrence; even no one from the public/people has come forward to substantiate the version of the complainant.*
- h) *That charge was framed on 03.5.2023 and still the trial has not been commenced and the applicant is in continuous detention with effect from 07.1.2023 without trial.*

- i) *It is yet to be determined by the trial Court whether the applicant destroyed DVR and CCTV cameras installed in his office.*
- j) *It is yet to be determined by the trial Court whether the applicant used to satisfy his sexual lust by deceiving young girls for the job in his hospital and whether such act of the applicant was ultimately retaliated causing the death of the deceased lady.*
- k) *It is yet to be seen by the trial Court whether the co-accused could be competent to record her statement under section 164 Cr.P.C., after a considerable period.*
- l) *Under the facts and circumstances of the case, without prejudice to the rights of the parties, it is yet to be determined by the trial Court whether it is a case of suicide or murder.*

7. No doubt, the applicant is nominated in the FIR; however, it is delayed for about two days, for which no reasonable explanation has been furnished by the prosecution for such a delay. The delay in criminal cases, particularly when it is unexplained, is always presumed to be fatal for the prosecution. The offense with which the applicant stands charged for Sections 365 and 302 PPC is yet to be determined by the trial Court. In the circumstances and because of the dicta laid down by the Supreme Court in the case of *Tanveer v. The State (PLD 2017 SC 733)*, the case against the applicant needs to be looked into by the trial Court on the allegations leveled against him by the prosecution as prima facie the entire case of the applicant is based on hearsay evidence as no eyewitness has been cited in the case who might have seen the alleged offense occurred at the hands of the applicant.

8. I have cautiously scanned and ruminated the material placed on record and reached a tentative assessment that whether it is a case of suicide or murder, this can only be resolved and determined by the trial Court after a full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant requires further inquiry in terms of Section 497(2) Cr.P.C. Besides, the co-accused has already been admitted to post-arrest bail by the learned trial Court vide order dated 03.4.2023 in Criminal Bail Application No.962/2023 on the ground of further inquiry. In such circumstances, the Supreme Court dispelled the notion in the case of *Kazim Ali v. The State (2021 SCMR 2086)* and held that where the role ascribed to a large number of accused was general which cannot be distinguished from each other and technical ground that consideration for post-arrest bail is on different footing would be only limited up to the arrest of the accused person because soon after their arrest they would become entitled to the concession of post-arrest bail on the plea of consistency and as such the accused person in such case were admitted to bail.

9. The grounds agitated by the learned counsel for the complainant cannot be assessed at the bail stage without recording the evidence in the matter as such the applicant has made a case of post-arrest bail in the aforesaid crime at this stage for the simple reason that medical evidence coupled with DNA report and other material collected during investigation prima facie makes the case of the applicant of further probe.

10. For the foregoing reasons, the applicant is admitted to post-arrest bail in the aforesaid crime on furnishing solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) with PR bond in the like amount to the satisfaction of the trial Court. The trial Court shall endeavor for early disposal of the case within two months and such compliance shall be made through MIT-II of this Court.

11. Needless to mention that the observations made in this order are of tentative nature which shall not in any manner influence the trial Court and that this concession of bail may be canceled, under Section 497(5) Cr. P.C., if the applicant misuses it in any manner, including causing a delay in the expeditious conclusion of the trial.

12. This instant Criminal Bail Application stands disposed of.

JUDGE

