

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Cr. Bail Application No. S- 923 of 2023

(Bilal Ghori Vs. The State)

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objections at Flag 'A'.
2. For hearing of MA No. 7843/2023 (Ex./A)
3. For hearing of Bail Application.

Date of hearing and order: 13.05.2024.

M/s Qurban Ali Malano and Syed Israr Ahmed Shah, Advocate for applicant along with applicant.

Mr. Sabir Hussain Samo, advocate for the complainant.

Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

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O R D E R

Adnan-ul-Karim Memon J:- Applicant Bilal Ghori was admitted to ad-interim bail vide order dated: 21.12.2023 in Crime No:263 of 2023, for offence under section 302, 34 PPC of Police Station Mehrabpur. The accusation against the applicant is that on 10.10.2023, he administered poisonous GULAB JAMAN to the sister of complainant Mst: Farwa Riaz, later on she died during treatment in the Hospital, on such allegations Police lodged F.I.R No:263 of 2023 at Mehrabpur Police Station on 13.10.2023, with a delay of about three days.

2. Learned counsel for the applicant has submitted that the deceased was alive one day in Mehrabpur Hospital, but her statement was not recorded, nor did she disclose how and who had given such Ghulab Jaman to her thereafter she was shifted to Gambat Hospital; that no specific role of the applicant is mentioned in the FIR; that the post mortem report reveals that Benzodiazepines were found in the blood of deceased. He added that Benzodiazepines are a class of drugs used for the treatment of anxiety and insomnia and include drugs commonly known as Xanax, Klonopin. Valium, Ativan and Versed. Known side effects of Benzodiazepines include drowsiness, confusion, dizziness, impaired coordination, increased

risk of falls and accidents, depression, and increased anxiety. reports further reveal that the deceased was admitted to the hospital for Benzodiazepine poisoning. It appears that the drugs administered that led to her death cannot be attributed to the applicant as such the family members of the deceased can be questioned and prima facie the Benzodiazepines were given to the deceased by the complainant's family. He further submitted that the police had not discovered any incriminating material from the applicant even though he has no previous criminal record. He emphasized that the investigating officer in his report under Section 173 Cr.P.C., has disclosed that an offense of qatl bis-sabab punishable under Section 322 P.P.C. was/is made out other than qatl-i-amd under Section 302; however, the learned Magistrate inserted Section 302 PPC in the charge sheet, which is apathy. Learned counsel has further submitted that Section 322 P.P.C. falls outside the Prohibitory Clause of Section 497(1), Cr.P.C., therefore sending the applicant behind the bar pending trial can only be justified if this case falls within the scope of any of the exceptions stated in the case of Zafar Iqbal v. Muhammad Anwar (2009 SCMR 1488), there is, however, nothing on record that may attract any of the said exceptions and justify denial of pre-arrest bail to the applicant. Finally learned counsel for the applicant has prayed for confirmation of interim pre-arrest bail granted to the applicant vide order dated 21.12.2023. In support of his contention, he relied upon the cases of Shahzaib Vs. The State (2017 YLR Note 311), Intizar Hussain Vs. The State and another (2022 MLD 10) Islamabad, Mst. Bhagul Vs. The State (2017 YLR 629) Sindh Hyderabad Bench, Muhammaduddin and another Vs. The State (2012 P.Cr.L.J 1388) Sindh, and Chaudhry Nadeem Sultan Vs. The State through P.G Punjab and another (2022 SCMR 663).

3. Learned Additional PG assisted by learned counsel for the complainant has submitted that the applicant has a specific role in the F.I.R. he argued that a postmortem of deceased Mst: Farwa was conducted, which shows that she was administered poison Chemical Examiner report supports the case of the complaint all the P.Ws have supported the version of prosecution in their statements recorded under section 161 Cr.P.C. Moreover, Pre-arrest bail is extraordinary relief and is only available in cases where there has been malafide on the part of the complainant or police but no such allegations are pointed out by learned counsel for the

applicant/accused; that there is ample material on record which connects the present applicant with the commission of the crime, he argued that the punishment for the offenses with which the applicant is charged, though non-bailable, fall within the non-prohibitory clause of section 497 (1) Cr.P.C., that the prosecution has sufficient evidence to establish a nexus of the applicant with the offence for which he is charged, hence the present applicant is not entitled to extraordinary relief of pre-arrest bail in the present circumstances.

4. I have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

5. Tentative assessment of record reflects the following aspects of the case:-

- i). *The alleged offence took place on 10-10-2023 and reported on 13-10-2023 after delay of three days.*
- ii) *Learned counsel for the applicant has filed statement dated 13-05-2023 along with inquiry report submitted by SDPO Naushahro Feroze, which shows that the case requires to be challaned under section 322 PPC and not under section 302 PPC based on statements of Asif Ali Talpur Manager MCB Branch Mehrabpur and Rajibuddin Mojai Rajper Chowkidar MCB Branch Mehrabpur, statement of SIP Saleem Raza Qazi investigating officer of the case of PS Mehrabpur.*
- iii) *Chemical examiner report dated 15-11-2023 shows that the benzodiazepine group was found positive and poison was detected from viscera.*
- iv) *Postmortem report dated 13-01-2023 shows that the body of deceased Farwa Riaz was brought to the Taluka Hospital Kandiaro on 11-10-2023 to ascertain the cause of death.*
- v) *Charge sheet No. 162A/2023 dated 29-02-2024 shows that Investigating Officer recommended the case to be challaned under section 322, 34 PPC and order passed thereon by the Magistrate, however no copy of the order has been placed on record.*
- (vi) *Letter dated 28-07-2022 of FIA showing that deceased lady was blackmailed, harassed and inquiry was conducted against one Imam Dino of Telenor Micro Finance Bank Mehrabpur District Naushahro Feroze.*

6. Prima facie, there is a delay of 3 days in lodging the FIR of the alleged incident, and further the name of the present applicant also appears

in the FIR with the role of administering the deceased Ghulab Jaman, and initially, he had been charged with an offense of Section 322 PPC, but subsequently the learned Magistrate disagreed with the investigation report and added section 302 PPC in the charge sheet, for which the applicant states that this is a case of two version and requires further deliberation whether section 302 PPC is attracted or 322 PPC is attracted.

7. The facts and circumstances narrated above and the judgment pronounced by the Supreme Court on the subject issue, the Courts of law are under a bounded duty to entertain a broader interpretation of the “law of bail” while interpreting material placed before it more liberally to arrive at a conclusion which is badly required due to the apparent downfall in the standard of investigation. Otherwise, the liberty of a person is a precious right that has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. To abridge or curtail liberty merely on the grounds of being involved in a criminal case without adjudging it on merits would certainly encroach upon the right against free life. This right should not be infringed, rather it has to be protected by the act of the Court otherwise it may frustrate the concept of safe administration of criminal justice.

8. This Court is not oblivious to the fact that unfortunately, one young lady has lost her life due to the consumption of intoxicant material i.e Benzodiazepines poison as opined by the Medico-Legal Officer vide his report dated, however, the fate of pre-arrest bail application is also to be decided within the framework of section 498, Cr.P.C. and under the guidelines on the subject laid down by the Supreme Court of Pakistan. Besides the above, the liability of the present applicant or charges leveled against him could only be determined by the trial Court after recording and evaluating the evidence. It is also a settled principle of law that at the bail stage deeper appreciation of the merit of the case cannot be undertaken and only a tentative assessment of the material available is to be made.

9. The grounds agitated by the learned Addl.PG and the complainant cannot be assessed at the bail stage without recording the evidence.

10. In view of the facts and circumstances narrated above, I am of the tentative view that the learned Court below has erred in appreciation of the

law on the subject while rejecting the bail of the applicant in the subject FIR, hence, the same is set at naught, as such this pre-arrest bail application is confirmed in terms of ad-interim bail order dated 21.12.2023 passed by this Court, subject to his furnishing further solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand) and PR Bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

11. 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 applicant misuses the concession of pre-arrest bail, then the trial Court would be competent to cancel his bail without making any reference to this Court.

JUDGE

Nasim/PA