

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-127 of 2024

(Sooran Singh alias Soorio Vs. The State)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Date of hearing & Order 13.08.2024

Mr. Shoukat Ali Rahimoon, Advocate for the applicant

Mr. Shahzado Saleem, A.P.G Sindh a/w I.O/SHO Mushtaque Ahmed of the case.

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ORDER

Adnan-ul-Karim Memon, J. The Applicant Sooran Singh alias Soorio seeks his release on post-arrest bail in F.I.R No.09 of 2024 for the offense under section 322 PPC at Police Station Chelhar. His earlier bail plea was declined by the trial court vide order dated 20.06.2024 on the premise that the dying declaration of the deceased recorded in a video clip, fully implicates the applicant with the alleged offence.

2. In the present case the accusation against the applicant is that due to a matrimonial dispute between the deceased with his wife, he recorded a video clip, making allegations against his wife to the extent that she had indulged in extra matrimonial affairs with the applicant thus he had no option but to commit suicide which he did, thus case against the applicant was registered under section 322 PPC based on such video clip

3. Learned counsel for the applicant/accused argued the case against the applicant/accused is false, fabricated, based on malafide, and concocted. He added that when a complainant does not actively pursue the prosecution of the accused and supports the version of the applicant by filling affidavits, it can lead to the applicant being granted such benefit of the doubt. Primarily, this is because the legal system aims to balance the rights of the accused with the interests of justice. If the prosecution is not diligent, the court may decide that keeping the accused in custody is not justified. However, it's important to note that granting bail does not mean the accused is acquitted or that the charges are dropped and the trial has yet to begin. He emphasized that section 322 PPC carries with it, punishment of 'Diyat' only. No express provision of law existed to show that the punishment of 'Diyat' would attract the prohibitory clause of section 497 Cr. PC. So far as the video clip of the deceased is concerned, he argued that the same piece of evidence is old and requires judicial scrutiny; and forensic authenticity, which factum is missing in this case, and on that basis the applicant cannot be kept behind the bar for indefinite period as a punishment without trial in a suicide case.

4. Learned Additional Prosecutor General assisted by the Investigating officer, opposed the grant of bail to the applicant; he next argued that filing affidavits of the complainant side, would not make a case for further inquiry and this tendency has been taken note of by the Supreme Court of Pakistan. If this is the stance of the prosecution, an important question arises in the present case, as to whether based on affidavits of some of the legal heirs of the deceased, concession of bail can be extended to the applicant/ accused. I am of the tentative view that at the stage of consideration of bail application, either anticipatory or regular bail such affidavit could not be taken into consideration. Learned counsel for the applicant has heavily relied upon the case of *Muhammad Najeeb v. The State* (2009 SCMR 448) and argued that the wife is the legal heirs of the deceased have pardoned the applicant/ accused and filed affidavits before this Court, then the case requires further inquiry into the guilt of the applicant/ accused. Therefore, the concession of bail can be acceded to in favor of the applicant. Be that as it may, before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against the accused, nature, and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Supreme Court rendered in the case of *Shahzad Ahmed Vs. The State* [2010 SCMR 1221]. Keeping in view the above principle, the learned counsel for the parties has been heard and the record has been perused.

5. Before going into any further discussion, it would be advantageous to reproduce Sections 321 and 322 of the Pakistan Penal Code herein under:

“321. Qatl-bis-Sabab.-- Whoever, without any intention to cause the death of, or cause harm to, any person, does any unlawful act which becomes a cause for the death of another person, is said to commit Qatl-bis-Sabab.

322. Punishment for Qatl-bis-Sabab.--Whoever commits Qatl-bissabab shall be liable to Diyat."

6. Admittedly, section 322, P.P.C. though non-bailable yet is not punishable with any period of imprisonment except the payment of Diyat. Analysis of section 321 PPC would show that this provision applies when a person (a) commits an unlawful act, (b) without any intention to cause the death of, or cause harm to any person, and (c) the said act becomes a cause for the death of another person. Mensrea is not the condition precedent to attract this section. The legislature has made actus reus culpable. The Pakistan Penal Code does not define “unlawful act”, so it must have recourse to the dictionary meaning. According to Black’s Law Dictionary, it connotes “conduct that is not authorized by law; a violation of a civil or criminal law” Section 321 PPC must be interpreted according to the principles discussed above. It makes a person legally accountable not only for engaging in an illegal act that results in the death of another person but also for failing to take measures within his power to prevent such an event from happening if he owes a duty of care. To succeed, the prosecution must establish a

causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the "but for" test). Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability. Section 322 PPC, Qatl-bis-sabab is punishable with Diyat only. However, per Schedule II of the Code of Criminal Procedure, 1898, the offense is cognizable and non-bailable. This provision was introduced following the amendment of Chapter XVI of the Pakistan Penal Code (Of offenses affecting the human body) in 1990. The accused cannot be sent behind bars when charged with an offense under section 322 PPC because, even if he pleads guilty at his trial and is convicted, he can only be imprisoned if he fails to pay the Diyat sum. His incarceration would, therefore, amount to punishing him before conviction. In such a situation the observation of the Supreme Court in the case of Syed Muhammad Firdaus and others v. The State (2005 SCMR 784):

“In addition to the above, it is to be noted that learned trial court vide order, dated 19th January 2004, summoned him and Dr. Sajid Hussain (petitioner No.2) being accused for the offence under section 319 PPC but surprisingly on 17th December 2004 on the basis of the same material, they were charged for Qatl-bissabab under section 322/34 PPC, which is a non-bailable offence as per schedule of Cr.P.C. It seems that the learned Judge could not decide whether it is a case under section 319 or 322 PPC. Be that as it may, in any case, they shall not be punished ultimately for death or life imprisonment as under section 322 PPC. The sentence is of Diyat; therefore, for this added reason as well, concession of bail cannot be denied to them under the law.”

7. It is settled law that where the criminal liability of an accused of an offence is Diyat only the offence does not fall within the prohibitory clause. Reliance in this regard can be placed on the case of Kazim Ali v. The State [1998 MLD 1535]. It is well settled that where an offence does not fall within the prohibitory clause, the acceptance of bail is the rule and the rejection is an exception. Reliance in this regard can be placed on the case of Tariq Bashir and others v. The State [PLD 1995 Supreme Court 34]. Besides, 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. Reference can be made to the case of Manzoor Hussain and others v. The State [2011 SCMR 902]. It is a settled principle of law that at the bail-granting stage the material available on record is to be sifted through to establish whether, on the face of the record, the accused person before the Court can be connected to the crime in question, hence no detailed inquiry is to be conducted by the Court. That being so, the detention of the applicant pending trial can only be justified if this case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir v. State PLD 1995 SC 34, Muhammad Tanveer v. State PLD 2017 SC 733 and Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488. There is, however, nothing on record that may attract any of the said exceptions and justify the denial of post-arrest bail to the applicant at this stage.

8. In principle, the trial Court has not exercised its discretion judiciously in denying the relief of post-arrest bail to the applicant in terms of law laid down by the Supreme Court which is a constitutional command under Article 189 of the Constitution.

9. What has been discussed above in the preceding paragraphs; and the facts and circumstances of the instant case, make it a case of further inquiry Accordingly, the applicant is granted post-arrest bail, in the case arising out of F.I.R No.09 of 2024 for the offense under section 322 PPC at Police Station Chelhar, subject to his furnishing bail bond in the sum of Rs. 200000/- (Two Hundred Thousand Rupees only) with one more surety in the like amount to the satisfaction of the Trial Court.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the investigating officer positively within one month. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

JUDGE

“Ali Sher”