

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-148 of 2024

Applicant : Rashid Ali Dahar, through
Mr. Muhammad Hanif Kalhoro, Advocate

Respondent : The State, through
Mr. Gulzar Ahmed Malano,
Assistant Prosecutor General

Date of hearing : 07-05-2024

Date of Decision : 07-05-2024

O R D E R

Arbab Ali Hakro, J: - Through this bail application under Section 497 Cr.P.C, applicant Rashid Ali, son of Manzoor Ali Dahar, seeks post-arrest bail in Crime No.59/2024, registered under sections 302, 392, 34 P.P.C at Police Station Naushahro Feroze. Previously, the applicant had filed CrI. Bail Application No.477 of 2024, before 1st Additional Sessions Judge/MCTC, Naushahro Feroze, which was dismissed vide order dated 09.03.2024; hence, the applicant approached this Court.

2. The facts of the prosecution case are that complainant Muhammad Yousif lodged the FIR on 15.02.2024 at P.S Naushahro Feroze in which he stated that his brother Muhammad Amir, aged about 33 years, used to ply his Toyota Corolla car bearing No.BES-356 as a taxi, usually stationed near Bhiria Road car stand. On the morning of 13-02-2024, Muhammad Amir drove his car to the car stand at Bhiria Road. Soon after, the complainant and his other brother, Muhammad Hanif, arrived at the same location, where Muhammad

Amir, other taxi drivers and their cousin Sajid Hussain, son of Sadaruddin Chahwan, were present. Around 1200 hours, two persons with open faces came to the car stand, out of whom one was tall with a moustache and a shaved beard, and the other was of average height with a light beard. They hired Muhammad Amir's car to travel to Noorpur, intending to return to Chanhi with their family. After agreeing on the fare, Muhammad Amir departed with the said persons. However, at about 1422 hours, the complainant received information that around 1400 hours, the aforementioned two persons, along with a third accomplice, had robbed Muhammad Amir's car at gunpoint and had murdered him by shooting him at the culvert of Duty Shakh in village Muhammad Ibrahim Mallah and fled away from the scene. The local residents shifted the dead body of Muhammad Amir to Civil Hospital Naushahro Feroz. Upon learning this, the complainant, along with relatives and friends, rushed to the Hospital, where they found the dead body of Muhammad Amir lying in the Mortuary, having firearm injuries at the back of his head and thigh of his left leg. The complainant called the Police, who also arrived at the Hospital and, after formalities and post-mortem examination, made over dead-body to the complainant, who took and buried it on 15.02.2024; the complainant lodged a formal report about the incident at Police Station Naushahro Feroze without naming any person as accused.

3. The record shows that after the registration of the FIR, the applicant was arrested by the Police, and the robbed car was recovered from his possession. During the investigation, a statement under Section 162 Cr.P.C of P.W Sajid Ali, who was present at the car stand, was recorded, who identified the present applicant as the culprit behind the incident.

4. At the very outset, it has been argued by the learned counsel for the applicant contended that applicant is innocent and

has been falsely roped in this case against the facts and circumstances. According to him, the applicant had contracted free-will marriage with Mst. Zainab Kolachi antagonized her relative, who was serving as CIA Incharge of Naushahro Feroze, and thus, by using his influence, falsely implicated the applicant in this case. He further argued that there is no eye-witness of murder or robbery as disclosed in the FIR. Hence, the matter requires further enquiry. He further contended that the applicant is not nominated in the FIR, and he has been implicated on the basis of further statement recorded under Section 162 Cr.P.C. He submitted that the recovery has been foisted upon the applicant and that FIR is delayed for two (02) days, for which no satisfactory explanation has been furnished, and the same has been lodged with due deliberation and consultation. He also argued that the confessional statement recorded before Police is inadmissible in the eyes of the law according to Article 38 of Qanun-e-Shahadat Order, 1984. He submitted that no specific role has been assigned to the applicant/accused. Therefore, he is entitled to the concession of bail. While concluding his arguments, he has relied upon the case laws reported as 2008 P.Cr.L.J 495, 2013 P.Cr.L.J 765 and 2023 MLD 1924.

5. Learned A.P.G opposed the grant of bail to the applicant/accused while submitting that in the statement recorded under section 162 Cr.P.C, the PW Sajid Ali, who was present with the deceased at the car stand, fully implicated the present applicant in the commission of the offence. He further contended that no enmity on the part of the complainant party has been brought on record to show that the accused has falsely been implicated. The recovery of the robbed car from the possession of the applicant corroborates the prosecution story, and the offence with which the applicant stands charged carries capital punishment and falls within the scope of the prohibitory clause of section 497(1) Cr.P.C. Hence, he is not entitled to the concession of bail.

6. I have heard learned counsel for the applicant, learned A.P.G. for the State, and perused the material available on record.

7. In the present case, it is undeniable that there was a delay of two days in the lodgment of the FIR. However, given the gravity of the incident, where an innocent life was lost, this delay in lodging the FIR cannot be considered a valid ground for the grant of bail. The record reveals that following the registration of the FIR, the applicant was apprehended by the Police and the deceased's robbed car was recovered from his possession. The applicant was identified by PW-Sajid Ali, who has not claimed any personal enmity against him. In his statement recorded under Section 162 Cr.P.C, PW-Sajid Ali categorically identified the applicant as the perpetrator of the crime. According to him, he was present with the deceased at the car stand and witnessed the culprits approached the deceased and hired his taxi. The post-mortem report corroborates this identification, revealing firearm injuries on the deceased's body. This evidence prima facie links the applicant/accused to the commission of the offence. The applicant's plea that he was implicated in this case due to his free-will marriage with Mst.Zainab Kolachi, which allegedly antagonized her relative serving as the CIA Incharge of Naushahro Feroze, cannot be addressed without exceeding the scope of a tentative assessment, a practice prohibited by law. It is a well-established legal principle that a bail application must be decided based on a tentative assessment of the matter, and a deeper appreciation of evidence is precluded. The applicant is implicated in an offence punishable with capital punishment, falling within the prohibitory clause under section 497(1), Cr.P.C. Prima facie; there appears to be sufficient material to connect the applicant with the commission of the offence. Furthermore, the case laws referred to by the applicant's counsel are distinguishable from the facts and circumstances of the present case.

8. It has been noted with growing concern that offences such as robbery-cum-murder are being reported with an alarming frequency. These heinous crimes are not only instilling fear among the populace but are also jeopardizing the safety of life and property of law-abiding citizens. The increasing incidence of such crimes fosters a pervasive sense of insecurity among the public at large.

9. Upon a tentative assessment of the evidence on record, it appears that the prosecution possesses sufficient evidence against the applicant to link him with the commission of the alleged offence. Consequently, he is not entitled to the concession of bail. Therefore, this criminal bail application is **Dismissed**.

10. It is important to note that the observations made above are tentative in nature and are only for the purpose of deciding this bail application, which shall not influence the trial court in any manner during the final decision of the subject case. However, the trial court is directed to proceed and conclude the trial expeditiously.

JUDGE

Suleman Khan/PA