

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-1375 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE

23.01.2025

Applicant is present on bail.

Mian Taj Muhammad Keerio, Advocate for applicant.

Mr. Saad Salman Ghani, Advocate files Vakalatnama on behalf of complainant taken on record.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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O R D E R

AMJAD ALI SAHITO, J:- Through this bail application, the applicant is seeking confirmation of his pre-arrest bail in Crime No.72 of 2024, for offence under sections 302, 201 & 34 P.P.C, registered at P.S. Rahuki District Hyderabad. Earlier bail plea of applicant was declined by the learned Model Criminal Trial Court / 1st Additional Sessions Judge, Hyderabad vide impugned order dated 13.12.2024.

2. The facts of the case are already mentioned in the F.I.R and memo of bail application, hence need not to reproduce the same hereunder.

3. Per learned counsel, FIR is delayed about 22 days no information was given to the police about the missing of the deceased Dilsher; that in fact the dead body was recovered from the Railway Track and subsequently applicant / accused has been booked in this case; that alleged incident is unseen and witnessed one as not a single evidence has been brought on record to connect the applicant / accused with the commission of alleged offence; that no role has been assigned against the applicant / accused, as such, he is entitled for concession of bail.

4. On the other hand, leaned counsel for complainant as well as learned APG vehemently opposed the confirmation of bail and state that delay in registration of FIR has properly been explained as after the incident the complainant approached to the police station Pabban but PS Pabban informed that incident falls within the jurisdiction of PS Rahuki and thereafter the complainant appeared at PS Rahuki but they refused to register her FIR subsequently she had filed application under section 22-A&B Cr.P.C before learned Ex-Officio Justice of Peace concerned for registration of FIR, as such, after filing said application her FIR was registered against the accused persons. They further contended that there is no malafide on the part of complainant to involve present applicant falsely but the fact of the matter is that police officials in order to save their police personnel had tried to disappear evidence and therefore after registration of the FIR the complainant has disclosed that there was bloodstained on the carpet and *Dandas* were available at the place of incident even then police has not collected the evidence; in

such circumstances, the complainant moved the application to the DIG Hyderabad for transfer of investigation as the accused belongs to police department and within the jurisdiction of District Hyderabad, as such, transfer application was also allowed and now investigation has been transferred to Mirpurkhas District. Learned counsel for complainant as well as APG also pleaded that after grant of bail, the accused has not joined the investigation till today, as such, they request that accused custody may be handed over to the I.O of the case for further investigation. In support of contentions, counsel for complainant relied upon the case of Anwar Ali Khaskheli and another v. The State [2022 MLD 570].

5. Heard learned counsel for the respective parties and perused the record.

6. From perusal of record it reflects that 15.11.2024 at the sunset time the deceased Dilsher went out of the home and subsequently it came on the record that at about 05:00 p.m. two motorcycles on one namely Lal Shah and Saddam Shah and on another Syed Mehboob Ali Shah were sitting came near to the Dilsher and asked him for some work as such he was boarded with accused Mehboob Shah thereafter he did not return for three days. Complainant party have been continuously searched and approached to the applicant / accused Mehboob Shah for whereabouts of deceased Dilsher but he disclosed that there was quarrel taken place in between Dilsher and Gulabo Bheel; however, the contact was made and subsequently complainant approached at police station for recovery of deceased Dilsher but police officials shown her some photographs of the deceased person wherein she has identified the deceased Dilsher. Police informed the complainant that the dead body is lying at Civil Hospital Hyderabad and thereafter she has lodged the FIR. The name of applicant / accused appeared in the FIR with specific role that on 15.11.2024 deceased Dilsher was boarded with him and subsequently he was murdered and the accused persons had tried to cause disappearance of evidence with intention to save from legal punishment, as such he was thrown out at the Railway Track. When it was confronted with learned counsel for applicant that any news was published in the daily newspapers or any video or audio was flashed on television regarding finding of dead body of deceased, he was unable to reply properly. The accused has not joined the investigation as such recovery of carpet (Qaleen) and Dandas have not been made. At bail stage only tentative assessment is to be made. Sufficient material is available on record to connect the applicant with the commission of alleged offence. The Nothing has been brought on record to show any ill-will or malafide on the part of the complainant which is requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan [2019 S C M R 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is

calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

7. In view of above discussions, the applicant/accused failed to make out good case for confirmation of his bail. Consequently, the bail application is **dismissed** and interim pre-arrest bail earlier granted to the applicant/accused vide order dated 20.12.2024 is hereby **re-called**. Since the learned counsel for complainant as well as learned APG pointed out that accused being a police official has not joined the investigation, therefore, they request that his custody may be handed over to I.O of the case. The police official present is directed to arrest the applicant and subsequently directed him to handed over accused custody to I.O of the case.

8. Needless to mention here that the observations made hereinabove are tentative in nature and same would not prejudice the case of either party at trial.

JUDGE

Muhammad Danish*