

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Cr. Bail Appl. No.2130 of 2024

06.11.2024

Mr. Dilber Khan Leghari, Advocate for applicant.
Mr. Khadim Hussain, Addl. P.G

ORDER

MUHAMMAD IQBAL KALHORO J: Applicant Murad Ali Leghari is seeking post arrest bail in Crime No.434/2021 U/s 302, 324, 109, 34 PPC of P.S. Awami Colony, Karachi.

2. As per brief facts, complainant has alleged in FIR that she has some plots situated near northern bypass, Karachi, which co-accused Irman Kalwar and his relatives have occupied after murdering her maternal cousin Hakim, regarding which a case is already pending in the court. Same people used to make threats to the complainant party to withdraw the case. On 04.07.2021 at 10.15 p.m. when complainant was present in her house alongwith her husband and relatives Mashooque Ali, her sons Sajjad and Fida Hussain were outside, they heard firing reports upon which they came out and saw Fida Hussain soaked in blood lying on the floor whereas her other son holding applicant armed with a pistol in his arms. The other co-accused namely Shoukat was also apprehended by her other son Ghulam Hussain who was armed with a pistol. Meanwhile co-accused Imran Kalwar, Aijaz Kalwar and others duly armed with pistols came at the spot to rescue their accomplices, they made firing from their pistols injuring two passersby and rescued apprehended persons including applicant. Then they made their escape good after making aerial firing. Meanwhile injured son of complainant namely Fida Hussain was taken to Jinnah Hospital, where he succumbed to injuries and died. During investigation applicant was arrested on 09.07.2021.

2. Learned counsel for applicant has contended that out of six persons nominated in the FIR, four accused have been let off by the police and only applicant Murad and co-accused Shoukat have been challaned in this case; FIR is delayed by four days which has not been explained; the place of incident is doubtful as different witnesses have given different spots to be the place of incident; the complainant is not the eyewitness of incident; conduct of the witnesses is incomprehensible and unnatural as instead of parents, the injured/deceased Fida Hussain was taken to hospital by strangers and one brother; injured passersby have not taken name of the applicant in their statements u/s 161 Cr.P.C; the incident took place at 10.15 p.m. but no source of light has been identified in the investigation; nothing was recovered from the spot; CDR report

showing presence of applicant at spot is suspicious; out of 21 witnesses only three witnesses have been examined so far and despite lapse of three years the trial has not concluded. Learned counsel has relied upon 2024 SCMR 28, PLD 2017 SC 147, PLD 2022 SC 112 and 2018 P Cr. L J 140 to support his arguments.

3. On the other hand, learned APG has opposed the bail stating that the co-accused were let off by the police purportedly on filing of affidavit by complainant but he has examined the entire papers and has not found any affidavit filed by the complainant exonerating the accused. According to him, co-accused Abid Kalwar belongs to a rich family and he and others have been extended favour by the I.O. Applicant was apprehended at the spot while committing the offence alongwith co-accused Shoukat but he made his escape good on account of intervention by co-accused. After his arrest, a pistol was also recovered from him; the trial has already commenced as three witnesses have been examined.

4. I have considered submissions of the parties and perused material available on record. The FIR and 161 Cr.P.C statements of the witnesses show that applicant was apprehended by the persons present at the spot while committing alleged offence. He was found armed with a pistol and made his escape good from the spot only when co-accused came to rescue him and other co-accused. He was arrested on next day of registration of FIR. Prima facie, there is sufficient evidence of the witnesses who have implicated him in the alleged offence by assigning him direct role. Meanwhile the trial has commenced and three witnesses have been examined by the trial court. Learned defence counsel has not submitted copies of evidence to see whether prima facie the witnesses have implicated the applicant in the case or not. Notwithstanding, since the trial is in progress and applicant is prima facie involved in the offence which carries capital punishment, he is not entitled to concession of bail.

5. In view of above, this bail application being devoid of merits is dismissed. However, at the same time, expeditious trial is right of the applicant, hence trial court is directed to examine witnesses without fail within four months. In any case after four months, the applicant would be at liberty to file a fresh bail application before the trial court, which if filed shall be considered independent of this order or order passed by the trial court earlier.

The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

The bail application is disposed of.

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