

IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1514 of 2024

Applicant : Muhammad Irfan
Through Syed Suleman Badshah Advocate

Complainant : Arif Sabir
Through Mr. Ghulam Mustafa Abro,
Advocate

Respondent : The State
Through Mr. Khadim Hussain Addl. P.G.

Date of hearing : 04.11.2024

ORDER

Omar Sial, J: Muhammad Irfan son of Faiz Muhammad has sought post arrest bail in crime number 222 of 2022 registered under sections 302,324,34 PPC at the Gadap City police station. His bail application filed before the learned 3rd Additional Sessions Judge, Model Criminal Trial Court, Malir Karachi was dismissed on 14.06.2024.

2. The aforementioned F.I.R. was registered on 26.05.2022 on the complaint of one Arif Sabir reported that on 25.05.2022 at about 1400 hours he received the phone call from Shahmeer to reach Aga Khan Hospital and on such information the complainant reached there and saw that his nephew Jazlan son of Faisal Sabir and his friend Shah Meer were lying in injured condition and they disclosed that they went to Bahria Town and when they left then reached at Jinnah Avenue where one boy was riding the motor cycle dangerously and upon asking he misbehaved and called his brothers and followed them and soon they

reached at Eifel Tower, Bahria Town, then some persons came in a car and they opened the fires which hit on the backside of head and their names later on came to know as Muhammad Ehsan son of Muhammad Faiz, Muhammad Irfan son of Muhammad Faiz, Muhammad Hasnain son of Muhammad Faiz and Inshal who run away from the spot. Later on Jazlan died due to injuries, hence the instant FIR was lodged.

3. I have heard the learned counsel for the Applicant and the Complainant as well as the learned Additional Prosecutor General Sindh. My findings are as follows:

4. It is an admitted position that the Applicant was arrested on 05.06.2022 and has been incarcerated since then. The only ground raised by the learned counsel for the Applicant is that the trial has not concluded within two years and therefore, the Applicant is entitled to bail on the ground of delay in trial. The bail has been resisted by the learned counsel for the Complainant and the learned Additional Prosecutor General on the ground that case diaries reflect that the counsel for the Applicant remained absent at trial on four occasions.

5. I have gone through the case diaries with the assistance of all three counsels and observed that although it is correct that counsel for the Applicant remained absent on four occasions, looking at the case diaries holistically it cannot be said that the delay in the

conclusion of the trial is on account of the Applicant or any one acting on his behalf. To the contrary, the learned trial Judge on 06.06.2024 wrote to the SSP (Investigation) to bring to his attention that the I.O of the case had been directed by multiple orders to produce the case property but he had failed to do so and as a consequence this deliberate negligence by the I.O. has significantly delayed the trial. The observation made by the learned trial Judge itself shows that delay in the trial has been caused due to the prosecution.

6. Section 497 (1) third proviso stipulates that a person shall be released on bail if he is charged for murder but his trial has not concluded within two years. There are two exceptions; (i) if the delay in conclusion of trial was on account of occasioned by an act or omission of the accused or by any other person acting on his behalf, and (ii) the accused was a convicted offender for an offence punishable with death or imprisonment for life or was in the opinion of the court a hardened, desperate or dangerous criminal or was accused of an act of terrorism punishable with death or imprisonment for life. Learned Additional Prosecutor General has confirmed that the Applicant does not have a criminal record. He further agrees that the Applicant has not committed an act of terrorism punishable with death. Further, apart from the fact that he does not have a criminal record, there is also no evidence which would suggest that he is a hardened, desperate or dangerous criminal.

7. I have further been informed that there are 27 prosecution witnesses in this case and that even after two years and five months only one witness has been examined.

8. Given the above, the Applicant has made out a case for grant of bail on the ground of statutory delay. He is therefore, admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs.1,000,000 (Rupees One Million) and a P.R. bond in the like amount to the satisfaction of the trial Court.

JUDGE