

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No.S-404 of 2024

Hakim *alias* Abdul Hakeem Budhani

Vs

The State

Applicant : Through Mr. Safdar Ali Ghouri, Advocate.
State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.
Complainant : Gulzar Ahmed Ganwas through Mr. Suhendar Kumar Gemnani, Advocate.

Date of hearing : 24.10.2024.
Date of Order : 24.10.2024.

ORDER.

Arbab Ali Hakro, J.- Applicant Hakim *alias* Abdul Hakeem, son of Khush Muhammad Budhani, seeks pre-arrest bail in Crime No.94/2024 of Police Station Nasirabad, District Kamber-Shahdadkot, registered for offence under Sections 302, 120-B, 34, PPC, after rejection of his bail plea by learned trial Court vide Order dated 20.07.2024.

2. The facts of the prosecution case, in brief, are that on 06.06.2024, at about 6.30 p.m., Saifullah *alias* Junaid son of complainant Gulzar Ahmed Ganwas, having been called by his friends Abdul Qayoom Massan, Muhammad Ali Dayo and two unknown persons, accompanied them from his home within sight of the complainant and PWs Intezar Solangi and Waqar Ali Gann and later, on 07.6.2024, at about 1.00 a.m.(night), Hakim Ali Chandio, a neighbour of the complainant, brought the dead body of Saifullah *alias* Junaid to the complainant, allegedly disclosing that Abdul Qayoom Massan and Muhammad Ali Dayo left with him Saifullah *alias* Junaid in injured condition at about 1210 hours and fled away; he then took Saifullah *alias* Junaid to Nasirabad Hospital for providing treatment, but he couldn't survive and passed away and the doctors confirmed his death. After postmortem, funeral and burial rituals of his son Saifullah *alias* Junaid, the complainant lodged an FIR.

3. Learned Counsel for the applicant contends that the applicant is innocent and has been falsely implicated in this case under suspicion; that there

is a delay of 18hours in lodging of FIR without plausible explanation; that the applicant is not nominated in the FIR; that the alleged incident of murder of deceased is unseen and unwitnessed; that the prosecution is having only last seen evidence, wherein also the applicant is not shown to be accompanying the nominated accused and the deceased and even he was not shown accompanying nominated accused Abdul Qayoom Massan and Muhammad Ali Dayo when they left the deceased son of complainant in injured condition with Hakim Ali Chandio, a neighbour of the complainant. He, therefore, contended that there is no iota of direct or indirect evidence to connect the applicant with the commission of the alleged offence and that the applicant, after the grant of interim pre-arrest bail, has joined the investigation and has not misused such concession. He finally prayed for a grant of pre-arrest bail to the applicant.

4. On the other hand, learned DPG, assisted by learned Counsel for the complainant, vehemently opposed the bail application on the grounds that the name of applicant is mentioned in the FIR, that no malafide has been shown by the applicant against the complainant to implicate him in this case falsely; that ground No.15 of the bail application, clearly indicates towards the involvement of the applicant with his admission showing him to be accompanying the deceased towards hospital in injured condition; that the offence carries capital punishment, therefore, at this stage, the applicant is not entitled to extraordinary concession of pre-arrest bail.

5. Heard learned Counsel for the applicant, learned Counsel for the complainant, learned DPG for the State and perused the material available on record.

6. In the case in hand, the present applicant/accused, Hakim @ Abdul Hakeem, has claimed that Abdul Qayoom and Muhammad Ali had left the deceased Saifullah in an injured condition and that he had taken Saifullah to the hospital, where he succumbed to his injuries. It is pertinent to note that if Abdul Qayoom and Muhammad Ali handed over Saifullah to the present applicant/accused in an injured condition, as stated by him, the natural course of action should have been to inform Saifullah's family or the police immediately. The failure of the present applicant/accused to report the incident to the authorities or the family members can be seen as an attempt to conceal the crime, which is indicative of his involvement. The fact that the present applicant/accused did not inform the family or the police about the deceased condition prima facie suggests that he was trying to hide

his involvement and possibly the involvement of others in the murder. The alleged incident occurred on 06-06-2024, and the F.I.R was promptly lodged on the very next day, i.e. 07-06-2024. Indeed, the applicant/accused is not charged in the FIR, but P.Ws Intezar Ali and Waqar Ali have fully implicated him in their statements recorded under Section 161 Cr.P.C. The deceased, in this case, was a young son of the complainant, aged 21/22 years, who was killed in a gruesome manner. The anticipatory bail under Section 498 Cr.P.C, being extraordinary relief, is granted on extraordinary grounds. It is a settled principle of criminal law that pre-arrest bail should not be allowed in routine matters. The Honorable Supreme Court of Pakistan in the case of **Ghulam Farooq Channa v. Special Judge ACE (Central-I) Karachi PLD 2020 SC 293**, held as under:-

"4. Grant of bail to an accused required in a cognizable and non-bailable offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of Hidayat Ullah Khan v. The Crown (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, prima facie supported by material and evidence, constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact; it is certainly not a substitute for post arrest bail."

7. In this case, there is no evidence or suggestion of malafide intent or ill will from the complainant or the prosecution witnesses to implicate the present accused falsely. It is noteworthy to mention that under Section 34 PPC, it is not required that a person should necessarily perform an act with his own hand; rather, common intention presupposes prior concert and necessitates a prearranged plan and if, in furtherance of their common intention, all of them join together and aid or abet each other in the commission of an act, then even if one of them does not physically perform the act, their presence or other actions contributing to the commission of the act would deem them to have himself committed the act within the meaning of Section 34 PPC. Moreover, the powers available to the court under Section 498 Cr.P.C are discretionary and must be exhausted with

care and caution, especially in cases of a heinous offence involving the death penalty, imprisonment for life or imprisonment for ten years. The court has to exercise the power judicially and not arbitrarily.

8. Prima facie, sufficient evidence is available on the record to connect the applicant/accused with the commission of the offence. The alleged offence falls within the prohibitory clause in subsection (1) of section 497 Cr.P.C, which disentitles the applicant for a grant of bail.

9. In view of the above circumstances, the applicant has failed to make out his case for the grant of extraordinary relief of pre-arrest bail. Therefore, the instant bail application was dismissed by a short order dated 24.10.2024.

10. Needless to say, the observations made hereinabove are tentative and would not influence the trial Court while deciding the case of the applicant on merits.

These are the reasons for the short order dated 24.10.2024.

JUDGE

*Qazi Tahir PA/**