

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 195 of 2024

Date	Order with signature of Judge
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Applicant :- Mansoor son of Yaseen
through Mr. Saifullah Abbasi, advocate.

Respondent :- The State
Through Mr. Muhammad Noonari,
Deputy Prosecutor General Sindh.

For hearing of bail application

Date of hearing: 18th March 2024

Date of order: 21st March 2024

ORDER

Salahuddin Panhwar, J.- Applicant Mansoor seeks post arrest bail in Crime No. 564/2021 for offences under Sections 324/302/34 PPC registered at P.S Sir Syed. Prior to this applicant/accused applied for the same relief before learned 1st Additional Sessions Judge, Karachi Central but the same was declined vide order dated 06.12.2023.

2. Succinctly, the facts of the prosecution case are that the applicant along with other accused in furtherance of their common intention caused firearm injuries to the complainant and one passenger Zafar, however, complainant during treatment succumbed to the injuries.

3. Learned counsel for the applicant/accused, *inter alia* contended that applicant/accused has been falsely implicated in the present case; that except solitary words of the complainant nothing has been brought against the applicant/accused; that since last one year the applicant/accused is in custody without any progress in the trial and that co-accused Muhammad Tariq was granted bail by this Court, as such, he submitted that case of the applicant/accuse also requires further probe. He prayed for grant of bail to the applicant/accused.

4. Learned DPG contended that applicant/accused is specifically named in the FIR with specific role by the complainant, who later on succumbed to his injuries; that plea of statutory ground is not available to the applicant/accused at this stage, as instant case is punishable with death or imprisonment for life and that prosecution has collected sufficient material against the applicant/accused. He prayed for dismissal of instant bail application.

5. Heard and perused the record.

6. Perusal of record, it appears that applicant/accused is named in the FIR with specific role of causing firearm injuries to the complainant and a passenger in Mazda. Initially after receiving fire arm injuries, the complainant was brought to the hospital in injured condition, who later on expired. It is evident from the record that it was none other than the deceased, who at the time of being injured, recorded his 154 Cr.P.C statement in presence of his son and Dr. Sanobar, and charged the applicant/accused along with co-accused Altaf for causing firearms injuries to him. In the case reported as **Qayyum Khan vs. The State and others (2022 SCMR 273)**, the apex Court refused bail in the eventuality when accused is specifically nominated in the FIR for causing injury to the injured. Besides, the instant case is one of dying declaration and whether the deceased while reporting the matter was conscious and oriented in time and space is a question which can only be resolved after recording evidence. It is well settled that while deciding a bail application only tentative assessment is to be undertaken and no deeper appreciation is permissible. With regard to statutory ground, under Section 497 Cr.P.C, it is provided that court shall except where it is of the opinion that the delay in trial of the accused has not been occasioned by an act or omission of the accused or any other person acting on his behalf direct that any person shall be released on bail who being accused of any offence punishable with death, has been detained for such offence for a continuous period exceeding two years. However, in the present case, the

applicant/accused is in custody since January 2023, thus statutory ground under third proviso to section 497 of the Criminal Procedure Code is not available to the applicant/accused at this stage. Record further reflects that applicant/accused was firstly arrested on 30.09.2021 and then jumped from bail and thereafter he surrendered before the Court where he was granted interim pre-arrest bail, later on such concession of interim pre-arrest bail was recalled on account of absence of the applicant/accused vide order dated 20.07.2022 and thereafter, on 09.01.2023 he was arrested and was remanded to jail. The conduct of the applicant/accused prima facie shows that he twice misused the concession of bail granted to him. Therefore, he is not entitled for grant of bail on this ground alone as well. With regard to the grant of bail to co-accused Muhammad Tariq, his case is distinguishable from the case of the applicant/accused. Hence, the applicant/accused is not entitled to the concession of bail at this stage of case. Accordingly, the bail plea is hereby dismissed. However, while parting the trial Court is directed to conclude the trial expeditiously. Trial Court shall ensure that private witnesses are provided complete protection until their evidence is recorded by directing the concerned SSP to submit a protection plan for that period.

7. Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of case.

JUDGE