

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 326 of 2022

Date

Order with signature of Judge

For hearing of bail application

08.03.2022

Syed Samiullah Shah advocate for applicant
Ms. Rahat Ehsan, Addl. Prosecutor General Sindh

Salahuddin Panhwar, J.- Succinctly, the facts of the prosecution case are that on 09.06.2020 at 1500 hours, applicant along with his accomplice came at the shop of the complainant and one of them on the force of weapon was looting the complainant, when Rana Muhammad Shahid made aerial firing, upon which applicant/accused fired at complainant which hit on his back and went through and through. Complainant caught hold him and fell down. The accused standing outside the shop opened fires upon complainant's brother which hit him. Thereafter, both the accused persons went away from the place of incident on their motorcycle.

2. Learned counsel for the applicant/accused contends that applicant has been falsely involved in the instant case; that name of the applicant does not transpire in the FIR; that there is unexplained delay of 15 days in lodging of the FIR; that no incriminating material has been recovered from the possession of the applicant; that identification parade was held in violation of the settled principles of law, hence prayed for grant of bail.

3. On the other hand learned **Additional Prosecutor General Sindh** has opposed the bail application on the ground that applicant has committed heinous offence which is carrying capital punishment, wherein a young boy lost his life and other one was seriously injured; that the offence with which the applicant is charged is falling within the prohibitory clause of Section 497 Cr.P.C; that applicant was arrested and in the identification parade before the Magistrate, he was rightly identified by the complainant with his role and he is also involved in number of other such like cases.

4. Heard and perused the record.

5. No doubt applicant is not named in the F.I.R. but he was arrested in another FIR and during interrogation he disclosed to have committed the present offence along with his accomplice. The applicant was put in identification parade before concerned Judicial Magistrate, wherein the complainant has rightly identified the applicant and disclosed his role; that with regard to delay in lodging of FIR, the complainant fully explained the delay, in any event delay in lodging of the FIR alone is never considered circumstance sufficient for grant of bail in a case carrying capital punishment. Reliance is placed on the case of *Haji Guloo Khan v. Gul Daraz Khan* and others (1995 SCMR 1765), the Honourable Supreme Court has as under:

“No doubt, the benefit arising from the delay in lodging the F.I.R goes to the accused which could also be taken into consideration along with other circumstances in the case at the stage of deciding the bail application, but delay in lodging the F.I.R alone is never considered a circumstance sufficient for grant of bail in a case involving capital punishment.”

6. Criminal record of the applicant has also been placed on record, which shows that he has previous criminal history of such like cases, thus, it appears that he has misused the concession of bail in other cases. In any event, the perusal of available material links the applicant/accused with commission of offence involving in case of capital punishment, therefore, suffice to say applicant has failed to bring the case, within subsection (2) of section 497, Cr.P.C. and it is authoritative proposition of law that an accused, charged with offence of capital punishment is not entitled to be released on bail unless he succeeds in bringing his case within the meaning of further inquiry.

7. For the foregoing reasons, the bail application is dismissed. However, it is clarified that observations made in this order are tentative in nature and same shall not prejudice the case of either party. However, learned trial court is directed to conclude the trial expeditiously.

J U D G E