

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE ATHAR MINALLAH

CRIMINAL PETITION NO. 263 OF 2023

(On appeal against the order dated 22.02.2023 passed by the High Court of Sindh, Karachi in CrI. Bail Application No. 2107/2022)

Salman Zahid

... Petitioner

Versus

The State through P.G. Sindh

... Respondent

For the Petitioner: Mr. Aamir Mansoob Qureshi, ASC
(via video link from Karachi)

For the State: Mr. Hussain Bux Baloch, Addl. P.G.
Mr. Imtiaz Ali, Inspector
Mr. Rizwan Shah, Inspector
(Via video link from Karachi)

For the Complainant: Mr. Saalim Salam Ansari, ASC
(Via video link from Karachi)

Date of Hearing: 27.04.2023

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 22.02.2023 passed by the learned Single Judge of the learned High Court of Sindh, Karachi, with a prayer to grant post-arrest bail in case registered vide FIR No. 808 dated 29.06.2021 under Sections 302/337-J/109/34 PPC at Police Station Gulshan-e-Iqbal, District East, Karachi, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that on 27.06.2021, the son of the complainant namely Yusha Rizwan along with his wife Areen Jannat, went to three places namely (i) Greeno Juice Centre, (ii) KFC and (iii) a medical store and from these three places, he had some intoxicated thing, which ultimately caused his death. On 29.06.2021, the complainant got lodged the FIR against the unknown persons, who were present at these three places at the relevant time. On 30.06.2021, the

complainant got recorded his statement under Section 161 Cr.P.C. wherein he did not nominate anyone as an accused. On 09.07.2021, after 12 days of the lodging of the FIR, the complainant recorded his further statement under Section 161 Cr.P.C. in which he suspected the petitioner and others to be murderer of his son. On 28.12.2021, after lapse of more than six months, the complainant got recorded yet another further statement under Sections 161 Cr.P.C. wherein he nominated the petitioner to be the real culprit. The petitioner was arrested on 17.02.2022 whereafter he applied for post-arrest bail before the learned Trial Court as also before the learned High Court but could not get the relief sought for. Hence, this petition.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the allegations leveled against the petitioner are false, frivolous, baseless, concocted and the prosecution story is not worthy of credit. Contends that the complainant nominated the petitioner in his statement recorded under Section 161 Cr.P.C. after a period of six months, therefore, it loses its sanctity. Contends that the USB allegedly containing audio recording of conversation between the petitioner and the star witness Nawaz was never sent for forensic examination. Contends that the entire case of the prosecution is based upon circumstantial evidence and the same is not sufficient to connect the petitioner with the commission of the crime. Lastly contends that the learned High Court while declining bail to the petitioner has not followed the guidelines issued by this Court for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioner may be released on bail.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant opposed the petition by contending that the petitioner has specifically been nominated by the complainant while recording his supplementary statement and he was found involved during police investigation, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

As per the contents of the crime report, on 27.06.2021 the son of the complainant namely Yusha Rizwan along with his wife Areen Jannat, went to three places namely (i) Greeno Juice Centre, (ii) KFC and (iii) a medical store and from these three places, he had some intoxicated thing, which ultimately caused his death. On 29.06.2021, the complainant got lodged the FIR against the unknown persons, who were present at the above-said three places at the relevant time. On 30.06.2021, the complainant got recorded his statement under Section 161 Cr.P.C. wherein he did not name anyone as an accused. However, on 09.07.2021, after 12 days of the lodging of the FIR, the complainant recorded his further statement under Section 161 Cr.P.C. in which he suspected the petitioner and others to be murderer of his son. He further got recorded his statement on 28.12.2021 i.e. after lapse of more than six months wherein he nominated the petitioner to be the real culprit. A bare look of the crime report and the subsequent statements of the complainant under Section 161 Cr.P.C. shows that the complainant remained changing his stance. In his statement dated 28.12.2021, it was stated that one Nawaz Mehmood was contacted by the petitioner for the murder of the deceased but instead of arraying the said Nawaz Mehmood as an accused, he was made a witness. This is now a well settled proposition of law that any statement of the prosecution witnesses if recorded at a belated stage, it loses its sanctity. Reliance is placed on the judgments reported as Abdul Khaliq Vs. The State (1996 SCMR 1553) and Noor Muhammad Vs. The State (2020 SCMR 1049). We have been informed that the USB allegedly containing audio recording of conversation between the petitioner and the star witness Nawaz Mehmood has not been sent for forensic examination, therefore, in view of the law laid down by this Court in Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) it is unsafe to rely upon the same as a piece of evidence in a court of law. The prosecution case hinges upon the circumstantial evidence. The fundamental principle of universal application in cases dependent on circumstantial evidence is that in order to justify the inference of guilt of an accused, the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The cumulative effect of all these aspects creates a doubt in the genuineness of prosecution version. It is settled principle of law that benefit of doubt can be even extended

at bail stage. Reliance is placed on Muhammad Ejaz Vs. The State (2022 SCMR 1271), Muhammad Arshad Vs. The State (2022 SCMR 1555) & Fahad Hussain Vs. The State (2023 SCMR 364). Although the petitioner was found involved during Police investigation but it is settled law that *ipsi dixit* of the Police regarding the guilt or innocence of an accused could not be depended upon as the same would be determined by Trial Court on the basis of evidence available on record. The petitioner is a young boy of 18/19 years of age and reportedly a heart patient. He is behind the bars for the last more than 14 months. This court in a number of cases has held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court. Before parting with the order, we may observe that the observations made in this order are tentative in nature and would not prejudice the proceedings before the Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
27th of April, 2023
Approved For Reporting
Khurram