

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Athar Minallah

Criminal Petition No.243 of 2024

(Against the order dated 06.03.2024 of
the Lahore High Court, Lahore passed
in Crl. Misc. No.84180-B of 2023)

Mst. Ishrat Bibi

...Petitioner

Versus

The State through Prosecutor General,
Punjab and another

...Respondents

For the petitioner:

Mrs. Bushra Qamar, ASC

For the State:

Mr. Khurram Khan, Additional
Prosecutor General, Punjab

For the complainant:

Mr. Khalid Masood Sandhu, ASC

Date of hearing:

22.05.2024

JUDGMENT

Muhammad Ali Mazhar, J. This Criminal Petition has been brought by the petitioner for seeking post-arrest bail in FIR No.406, dated 17.07.2021, lodged under Sections 302, 34, 118, 120-B, 109, and 506 of the Pakistan Penal Code, 1860 ("**PPC**") at Police Station B-Division, Kasur.

2. The aforesaid First Information Report ("**FIR**") was lodged by the respondent No.2 (complainant) against three unknown persons. According to the narrative of the complainant, she, along with other family members were asleep in the her house when at about 02:50 A.M, three unknown persons entered into the house and fired at the complainant's son, Irfan, hitting the right side of his leg and his lower abdomen, hence he succumbed to his injuries while on the way to the District Headquarter Hospital, Kasur.

3. The learned counsel for the petitioner argued that the petitioner was not nominated in the FIR but she was implicated through the supplementary statement, without disclosing any source of information regarding her involvement. Moreover, the complainant

did not mention when, where, and in whose presence the alleged conspiracy of committing the murder of her husband was hatched. He further argued that no independent witness was cited by the complainant regarding the alleged conspiracy or abetment. He further contended that the petitioner is a lady having a suckling baby of 2 years of age, hence she is entitled for the relief of bail in light of the latest judgments of this Court reported as **2023 SCMR 887**, **2023 SCMR 1729**, **PLD 2022 SC 764**, and **2023 SCMR 383**. He further averred that the co-accused, Naveed Sattar (principal accused), has been granted bail by this Court on 20.09.2023, while the co-accused, Mst. Noreen, has been granted bail by the learned Additional Sessions Judge. According to the learned counsel, the petitioner is also entitled to be enlarged on bail in view of the rule of consistency.

4. The counsel for the complainant opposed the bail petition and argued that the High Court has rightly declined to grant bail to the petitioner. He further argued that the petitioner was the mastermind of the entire event which resulted in the murder of her husband by the co-accused persons. He concluded that the grant of bail to some of the co-accused persons does not make out a case for the grant of bail to the petitioner, whose role was not at par with the other co-accused persons, hence the principle of rule of consistency does not apply.

5. The learned state counsel argued that many of the co-accused persons have been granted bail by the Trial Court as well as this Court. According to him, it is difficult to distinguish the role of the present petitioner from the other co-accused persons. However, he added that the allegation against the present petitioner was that she was constantly in contact with the co-accused persons and, according to the complainant, she was the mastermind who hatched the conspiracy of murder.

6. Heard the arguments. Along the lines of Section 497 of the Code of Criminal Procedure ("**Cr.PC**"), when any person accused of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years, however, according to the first proviso,

the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail. This proviso accentuates an additional consideration for the grant of bail while dealing with applications for bail of persons categorized in the proviso as a rider. This is encapsulated as beneficial legislation, in addition to considering whether there are reasonable grounds for believing that the accused is guilty of an offence punishable with death, imprisonment for life, or imprisonment for ten years. Undoubtedly, the Court has to first satisfy whether the bail petitioner is covered under the proviso or not. It is often seen that many women implicated in cognizable offenses are found poverty-stricken and illiterate and in some cases, they have to take care of children, including suckling children, as argued in this case. There are also many examples where the children are to live in prisons with the mothers. This ground reality is also ought to be considered which would not only involve the interest of such accused women, but also the children who are not supposed to be exposed to prisons, where there shall always be a severe risk and peril of inheriting not only poverty but also criminality, during the incarceration of their mother. The first proviso facilitates the Court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm under the doctrine of welfare legislation, reinforced by way of the proviso which requires a purposive interpretation for extending the benefit of bail to the taxonomy of persons mentioned in it, and the same is to be taken into consideration constructively and auspiciously depending upon the set of circumstances in each case, among other factors, including the satisfaction of the Court that the bail petitioner does not have any criminal record or is not a habitual offender.

7. This Court, in the case of Tahira Batool Vs. State (**PLD 2022 SC 764**), held that the first proviso to Section 497(1) Cr.PC provides that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of *such an offence* be released on bail. The expression "such an offence" used in this proviso refers to the offence mentioned in the second part (prohibitory clause) of Section 497(1) Cr.PC, and as for all other non-bailable offences, the Court is already empowered to release the accused on bail under the first part of Section 497(1), Cr.PC. The first proviso has thus made equal the power of the Court to grant bail in

the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused, to its power under the first part of Section 497(1), Cr.PC. This means that in cases of women, etc., as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, bail is to be granted as a rule and refused as an exception. Reference can also be made to other dictums of this Court rendered in the cases of Asiya Vs. State (2023 SCMR 383), Ghazala Vs. State (2023 SCMR 887), and Munawar Bibi Vs. State (2023 SCMR 1729).

8. Besides lodging FIR under Section 302, the prosecution on the basis of supplementary statements of the complainant, also added the offences of Section 120-B, 118, 109, 34 and 506, PPC. Chapter V-A of the PPC pertains to the offence of "Criminal Conspiracy". According to Section 120-A, PPC, when two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Whereas, the punishment of criminal conspiracy is provided under Section 120-B, PPC, which says that whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence; and whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both. In tandem, Section 118, PPC, is germane to concealing design to commit offence punishable with death or imprisonment for life if offence be committed; it lays down that whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment of life, voluntarily conceals by any act or illegal omission, the existence of design to commit such offence or makes any representation which he knows to be false respecting such design, if offence be not committed, shall, if that offence be committed, be punished with imprisonment of

either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine. While Section 109, PPC, provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code, for the punishment of such abetment, be punished with the punishment provided for the offence. So far as the applicability of Section 34, PPC, is concerned, it lays down the principle of constructive liability whereby if several persons would unite with a common purpose to do any criminal offence, all those who assist in the completion of their object would be equally guilty. Constructive liability under the PPC may arise in well-defined cases such as a person may be constructively liable for an offence which he did not actually commit by reason of common intention of all to commit such an offence (Section 34); he being an abettor in commission of an offence (Section 109); he being a member of a conspiracy to commit such an offence (Section 120B); and he being a member of an unlawful assembly, the members whereof knew that an offence was likely to be committed (Section 149); The principle of vicarious liability can be looked into even at the bail stage if from the FIR, the accused appears to have acted in preconcert or shared a common intention with his co-accused.

9. The purpose of bail is to ensure the attendance of the accused at the Trial Court, but neither is it punitive nor preventative. Likewise, there is no inevitable or unalterable principle for extending the facility of bail, but the facts and circumstances of each case dominate and command the exercise of judicial discretion. It is also a well-settled exposition of law that there is no hard and fast rule to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously. In the same breath, the turn of phrase "further inquiry" reckons the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. The doctrine of "further inquiry" denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. Whereas, the expression "reasonable grounds" refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous. The

prosecution is duty bound to demonstrate that it is in possession of sufficient material or evidence, constituting "reasonable grounds" that the accused had committed an offence falling within the prohibitory limb of Section 497, Cr.PC, while for achieving bail, the accused has to show that the evidence or material collected by the prosecution and/or the plea taken by the defence visibly created a reasonable doubt or suspicion in the prosecution case.

10. It is a matter of record that the FIR was lodged against some unknown persons, without even disclosing their identity or features. It is also a matter of record that from time to time the complainant recorded her supplementary statements to implicate different accused persons. The present petitioner was implicated *vide* supplementary statement dated 25.08.2021. Three further supplementary statements were also recorded by the complainant on 30.10.2021, 15.11.2021, and 22.11.2021. In the last supplementary statement dated 22.11.2021, she implicated the accused Naveed Sattar who was attributed the role of making fire on the right leg below the abdomen of the deceased, son of the complainant, who was granted bail by this Court *vide* order dated 20.09.2021 in Criminal Petition No.317-L of 2023. Whereas, *vide* order dated 01.04.2022, passed by the learned Additional Sessions Judge, Kasur, the pre-arrest bail granted to the accused Riaz Ahmad, Muhammad Mehboob Zahid, Ali Nawaz, Muhammad Tayyab, and Kousar Perveen was confirmed, and the co-accused Noreen Riaz who allegedly assisted the present petitioner for the murder of deceased Irfan was also granted bail. We were told that two more co-accused persons, Mubashir and Majid, have been declared proclaimed offenders. The above chronicles unequivocally demonstrate that except the present petitioner, all other co-accused persons have been granted bail somehow or the other by the Trial Court or this Court. Even in view of the supplementary statements, nothing was produced at this stage to show that the petitioner is mastermind in the murder. The varisity of supplementary statments and the material collected by the prosecution need to be examined by the Trial Court.

11. The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, recapitulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also, on the principle that like

cases should be treated alike, but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying the doctrine of parity in bail matters, the Court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not. In the case at hand, the petitioner has not been attributed any direct role of firing but she is allegedly a mastermind, who hatched the criminal conspiracy for the murder of her husband with other co-accused; she also abetted the offence allegedly; she acted with common intention in concert with other accused persons, etc. but it is a ground reality that the FIR was lodged against unknown persons, all the accused persons were implicated though supplementary statements of the complainant recorded one by one in different phases, and all the accused persons who were part of the criminal conspiracy, including the main accused who fired upon the deceased, have been granted bail, therefore at this stage, there appears no reasonable grounds for believing that the petitioner is guilty for the offence jotted down in the FIR, and in our tentative assessment, the petitioner has not only made out a case of further inquiry but she is also entitled to be enlarged on bail in view of the rule of consistency coupled with the benefit of the first proviso of Section 497, Cr.PC.

12. This Criminal Petition was fixed on 22.05.2024 when *vide* our order this petition was converted into an appeal and allowed. The petitioner was enlarged on bail subject to furnishing solvent surety in the sum of Rs.1,00,000/- (one lac) to the satisfaction of the learned Trial Court with the directions not to grant any unnecessary adjournments in the trial to the prosecution and defence and conclude it expeditiously. The observations made above are tentative in nature and shall not prejudice the case of either party before the Trial Court.

Judge

Judge

Islamabad
22.5.2024.
Khalid
Approved for reporting