2007 P Cr. L J 1303

[Karachi]

Before Faisal Arab, J

MUHAMMAD AMIN and 2 others----Applicants

Versus

THE STATE----Respondent

Criminal Bail Applications Nos.S-113 and S-200 of 2007, decided on 8th May, 2007.

Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), Ss.365, 343, 337-A(i), 337-L(ii) & 34---Police Order (22 of 2002), Art.156---Bail, refusal of---Allegations against accused (public functionaries) pertained to maltreatment, unlawful confinement and torture of a citizen, which could not be treated as a minor offence, but was to be taken very seriously---Plea that the punishment in such case did not come within the prohibitory clause of S.497, Cr.P.C., was hardly a ground for grant of bail, if prima facie material was available on record to connect a public functionary with the crime---Bail applications were dismissed, in circumstances.

Khairu and another v. The State 1981 SCMR 1136 and Imtiaz Ahmed v. State PLD 1997 SC 545 rel.

Adnan Memon for Applicants.

Allah Bachayo Soomro for Applicants (in Criminal Bail Application No.S-113 of 2007).

Muhammad Azeem Panhwar for the State.

ORDER

FAISAL ARAB, J.--- By this common order, Criminal Bail Application No.S-200 of 2007 and Criminal Bail Application No.S-113 of 2007 are being disposed of.

Applicants Muhammad Yousuf, Muhammad Amin, Muhammad Abid and Rehmatullah are implicated in F.I.R. Crime No.26 of 2006, registered with Police Station Satellite Town Mirpurkhas for offences under sections 365, 343, 337-A(i), 337-L(ii), 34, P.P.C. read with Article 156 of Police Order, 2002.

The present applicants have moved second bail application; their earlier bail applications were dismissed by this Court with the direction that applicants shall be at liberty to move fresh bail application after examination of the complainant. The operative part of earlier bail order reads as follows:

> "From the record, it appears that whereabouts of the complainant were not known and it was on 25-3-2006 at the motion of the father of the complainant, Sessions Judge, Mirpurkhas directed to raid at the Police Station Satellite Town and during the inquiry the torture cell was unearthed. Later on, the Honourable Supreme Court also took cognizance of the missing of complainant. Enquiry was conducted and applicants were found involved in the crime. Record maintained at police station does not show arrest or detention of the complainant at any of the police station. No statement against complainant was recorded on the basis of which it was alleged that he was picked up and being interrogated by the applicants. Though the statement of Ishaq Qasai was not recorded under sections 161 and 164, Cr.P.C. yet the learned trial Court could always examine such person as may be considered necessary in the matter. Police record also shows that applicant Amir Azam Shah, was very much privy to the torture caused to the complainant during the illegal confinement. The very fact that the complainant was being shifted from place to place to hide the guilt and aggravate the crime. Applicants connived and abated the crime. Hardly any case of such a nature comes on surface. It was on the intervention of Honourable Supreme Court applicants were apprehended otherwise people are normally victimized at the hands of police officials without any redress. It may be observed that the inquiries were conducted against the applicants and other co-accused. In all the inquiries, they were held liable for the heinous offence charged. Since in the instant matters, final challan has been submitted before the concerned trial Court. Looking at the entire scenario of the cases at least, I do not consider it of a fit case for concession of bail at this juncture. Accordingly, the bail applications of above-named applicants are dismissed. However, learned trial Court is directed to complete the proceedings of section 512, Cr.P.C. against the absconding accused and examine the complainant preferably within a period of three months. Whereafter the applicants will be at liberty to move bail afresh before the learned trial Court. Report of compliance be made with the M.I.T. of this Court without delay."

The allegations against the applicants are that they kept the complainant under wrongful confinement, maltreated and tortured him while he was in custody. In the evidence the complainant has categorically stated that when he was taken to the police station, his mobile phone, wrist watch, cash of Rs.42,980 and gold ring were forcibly taken from him by Muhammad Yousuf. He has further deposed that accused Amin Mari and Rehmatullah took him to Police Station Town and kept him there for three days where he was tortured. He further deposed that third applicant Muhammad Abid also asked him to accept the crime of a dacoity and upon his refusal he was further maltreated and tortured and was again taken to other place and was again tortured. Though in the narration of complainant's alleged ordeal, there certain exaggerations of events as pointed out by learned counsel for the applicants, but in our system of criminal jurisprudence the principle "Falsus in uno Falsus in Omnibus" does not apply

and the Courts are required to remove the chaff from the grain. Reliance is placed on the case of Khairu and another v. The State reported in 1981 SCMR 1136. Furthermore, no specific suggestion was put to the complainant with regard to depriving him of his belongings, unlawful confinement or acts of torture. No specific question was put that neither the cash, nor mobile phone or gold ring was snatched from him.

It was also argued that in the investigation section 365, P.P.C. has been dropped and all allegations attributed to the applicants are now bailable and therefore, the accused are entitled to the concession of bail. It may be pointed out that the trial Court rejected the bail application after relying upon the case of Imtiaz Ahmed v. State PLD 1997 SC 545 where it was held that even in cases where the alleged crime carries punishment of less than 10 years, the bail can be refused if prima facie sufficient material to connect a public functionary to a crime which was committed while performing official duties is available on record.

Learned counsel for the applicants has submitted that the decision in PLD 1997 SC 545 was delivered in a case which pertained to an offence of jail break. The ratio of this judgment of the Honourable Supreme Court is not based on the weight of the crime but it is based on the involvement of a public functionary in a criminal act committed in discharge of his public duty. In any case the allegations in the present case pertain to maltreatment, unlawful confinement and torture of a citizen by a public functionary the same cannot be treated as a minor offence but is to be taken very seriously. The plea that the punishment in such case does not come within the prohibitory clause is hardly a ground for grant of bail if prima facie material is available on record to connect a public functionary with the crime. In the circumstances both these bail applications are dismissed.

However, it may be noted that the observations made herein are not based on deeper appreciation of entire evidence. Further evidence is yet to be recorded in the case and after entire evidence in the case is recorded, the trial Court shall decide the matter on merits one way or other without being influenced by any observation made in this order with regard to applicants' nexus with the alleged offence.

H.B.T./M-77/K Order accordingly.

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