Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 1295-B/2021

Yasir Mehmood
Vs.
The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.01.2022	Mian Muhammad Arshad Javed, Advocate for petitioner. Mr. Qaisar Imam Ch. & Malik Fakhar Ali, Advocates for respondents. Mr. Aimal Amjad, State Counsel along with Muhammad Akram Cheema, Inspector.

Through the instant petition, petitioner is seeking bail after arrest in FIR No. 537 dated 09.06.2021, under Sections 365, 302, 201, 109 & 34 PPC, police station Koral, Islamabad.

2. The subject FIR was registered on the written application of Amir Sajjad, brother of the deceased Atif Ali on 09.06.2021 with the allegation of kidnapping. Subsequently on the recovery of dead body and disclosures, offence under Section, 302, 201, 109 & 34 PPC were inserted vide Zimni No. 02 dated 10.06.2021.

3. Learned counsel for the petitioner contended that initially the subject FIR was lodged against unknown persons and the petitioner was nominated after lapse of 48 hours through a supplementary statement without assigning any specific role; that there is no witness of the incident of the occurrence; that co-accused Muhammad Fazil has already been granted bail by the learned Additional Sessions

Judge-V (East), Islamabad and that petitioner is no more required for further investigation, therefore entitled to the concession of bail. The learned counsel placed reliance upon case laws reported as 2021 SCMR 63, 2021 SCMR 1802, 2020 SCMR 1431, 2014 SCMR 27 and 2011 SCMR 902.

4. The learned State Counsel assisted by learned counsel for the complainant /private respondent submitted that initially the subject FIR was registered regarding kidnapping of the deceased; that on the arrest of the petitioner, the events leading to the crime surfaced which were corroborated by the disclosure of principle accused Abdullah Fazil. According to the learned counsel, it was cold blooded murder and the chain of events sufficiently connects the petitioner with the commission of alleged offence which falls within the ambit of prohibitory clause of Section 497 Cr.P.C and entails capital punishment therefore, petitioner is not entitled for the concession of bail.

5. Arguments heard, record perused.

6. It is settled principle that while deciding bail application, only tentative assessment of the material collected by the prosecution is to be made. On the subject, the Hon'ble Supreme Court of Pakistan in recent Order dated 07.10.2021, in the case of '**Resham Khan v. The State through Prosecutor General Punjab, Lahore and another' (Crl. P 950 of 2021**) laid down that " *at bail stage deeper appreciation of evidence couldn't be made out but the court has to get the picture through tentative assessment of prosecution story, however in order to reach even a tentative assessment, whether*

the petitioners have made out a case of further inquiry or not, ***the court has to glean and congregate the composite effect of incriminating material brought on record by the prosecution,*** *inconsistency or contradiction if any in the statement made in the FIR vis-à-vis postmortem report and or the situation where ocular evidence is not supported by the medical evidence."*

7. The present FIR No. 537, dated 09.06.2021 was registered under Section 365 PPC at Police Station Koral Islamabad by the complainant regarding missing of his brother. On information, the police found an unknown body in the ditch "*nullah*". The complainant party was called to identify the dead body on 10.06.2021 who identified the same and Sections 302, 201, 34 & 109 PPC were inserted. The petitioner was arrested on 08.07.2021, who disclosed the events, leading to the death of the deceased. The disclosure made by the petitioner on 10.07.2021 was corroborated by the principal accused Abdullah in his statement before the police, who also got recovered the crime weapon.

8. Record further reveals that in the statement under section 161 Cr.P.C the witness namely Naveed Ahmed also nominated the petitioner along with principal accused Abdullah. On 10.7.2021 the petitioner also made pointation to the place of occurrence, office of the accused Abdullah, situated at Tarlai Kalan, Islamabad. It appears that all these facts were not known to anyone except the petitioner who disclosed the same to the police authorities which were further

corroborated by the disclosure of principal accused Abdullah before the police and the recovery of crime weapon.

9. In view of above tentative assessment, sufficient tangible evidence in the shape of statements of complainant, witness Naveed Ahmed, pointation of the place where the dead body was allegedly thrown, pointation of the place of occurrence, recovery of sofa with broken table mirror from the place of occurrence, personal belongings of the deceased i.e. mobile phone, wrist watch, wallet etc, the place where the dead body was buried, is available on record which, prima facie, connects the petitioner with the commission of alleged offence which falls within the ambit of prohibitory clause of Section 497 Cr. PC and entails capital punishment.

10. The citations referred by the learned counsel extend no help to the petitioner due to having distinct facts and circumstances.

11. The instant Crl Misc. is **dismissed.**

12. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Kamran.