ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Criminal Misc. No.1406-B of 2021
Muhammad Saboor.
Versus
The State & 2 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.02.2022	Mr. AjmalRazaBhatti, Advocate for petitioner, Syed Ali Raza, Advocate for respondent No.2 Mr. Muhammad SohailKhurshid, State Counsel with Fakhar Abbas S.I. with record.

This single order shall dispose of captioned criminal misc., as well as criminal misc. 18-B/2022, as both emanate from FIR No. 578, dated 07.11.2021, Under Section 302/34 PPC, PS LohiBher, Islamabad, whereby accused Muhammad Saboor and Muhammad Osama have prayed for post-arrest bail.

2- The Woe-wodge complainant Muhammad Shahzad father of the deceased described rueful incident on 07.11.2021 at about 05:00 pm, petitioners (Saboor& Osama) visited the house of Muhammad Shahzad (complainant) situated in village Kortana, Post Office Rawat, District Islamabad, where latter along with his brother AshiqHussain was already present. Both the petitioners allegedly took away Sheraz Khan, since deceased, with them on the asking of Shahbaz resident of DhokeChaudhrian, the other accused.

3- It was further alleged that when Sheraz, son of the complainant, did not come back till 09:30 pm, Jawad, the other son of the complainant made a phone call at the cell number of Sheraz, which was responded by petitioner Osama, who informed about a quarrel, sustaining injury and death of Sheraz.

4- On coming to know about the occurrence, complainant reached Arif Hospital Jinnah Garden where he found his son

Sheraz dead with a sharp edged weapon injury on his left flanks.

5- Learned counsel for petitioner Saboor argued that it was an unseen occurrence; that identification of the spot from where crime weapon was allegedly recovered is an inadmissible piece of evidence; that petitioner is a juvenile; that investigation is complete and his further incarceration would serve no useful purpose.

6- Learned counsel for petitioner Osama added that no incriminating material was recovered from the possession of said petitioner; and mere nomination without corroboration is not enough to refuse post-arrest bail as investigation has already been completed and the petitioner is no more required for further investigation and entitled for the concession of bail.

7- On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that both the petitioners are specifically nominated in the FIR; sufficient incriminating material is available on record which prima facie connects them with the alleged offence wherein an innocent boy lost his life, therefore, petitions are liable to be dismissed.

8- Arguments heard, record perused.

9- It is settled principle that at bail stage the court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the guilt or innocence of accused. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused. Reliance is placed upon case of '*Muhammad Sarfraz Ansari. v. State and others'* (**PLD 2021 SC 738**).

10- In the present, it is evident from the record that both the petitioners are nominated in the FIR with specific role of taking away the deceased from his house, duly witnessed by the complainant and his brother Ashiq Hussain, who were present in the house at the relevant time. Reliance is placed upon case titled as *Muhammad Imran v. The State & others* **(2016 SCMR 1401)**

11- From the crime scene, police collected blood stained dagger. Video recording was also taken in possession through USB that comprised of footage regarding shifting of the deceased to the hospital. Prior tothis, on 09.11.2021 police also took into possession call data record-CDR of the deceased and the petitioners.

12- Record further reveals that one of the witnesses Mst. Rehana Bibi in her statement has given the details of quarrel that took place between the petitioners and the deceased few days before the occurrence. The witness Jawad in his statement asserted to have made telephonic call on cell phone number of his deceased brother which was responded by petitioner Osama.

13- The evidence of last seen is also available on record in the shape of statement of one Muhammad Waheed, who witnessed the deceased in the company of petitioners on the fateful day at about 7:30 p.m. near bricklin, outside the gate of Navel Anchorage.

14- The recovery of cell phone of the deceased Sheraz is allegedly attributed to petitioner Osama, as one of his relatives Muhammad Ashfaq produced the same before the Police while there is also allegation of use of his motor-cycle in commission of alleged offence.

15- Having examined the material available on record, it can tentatively be concluded that sufficient tangible evidence is available on record which, prima facie connects the petitioners with the commission of alleged offence, which is not only heinous but also entails capital punishment. Reliance is placed

upon case titled as *Abid Hussain v. Tassawar Hussain & another* (**2021 SCMR 518**).Relevant portion is reproduced as under;-

> *"an offender, alleged to have committed some crime, is subject to a different legal regime; he is certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody, his release is regulated by the provisions of the Code of Criminal Procedure, 1898 and he must make out a case within the statutory framework provided thereunder."*

16- So far as the prayer for grant of bail to petitioner Saboor as being a juvenile is concerned, according to petitioner's own showing, he was at the age of 17 years, 11 months and 17 days at the time of alleged occurrence and thus was above the 16 years of age. Section 6 (4) of the Juvenile Justice System Act, 2018 provides that where a juvenile is more than sixteen years of age, arrested or detained for a heinous offence, he may not be released on bail if there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.

17- The case law relied upon by learned counsel for the petitioners do not extend any help to the petitioners due to having distinct facts and circumstances.

18- In view of above, petitioners have not been able to make out a case for grant of post-arrest bail at this stage. Consequently, captioned criminal misc. as well as Crl. Misc. 18-B of 2022 are accordingly **dismissed.**

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

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari