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

Criminal Misc. No. 374-B of 2021

Muhammad Atif
Versus
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.
	22.04.2022	Mr. Ehsan Majeed Gujjar, Advocate for petitioner. Syed Shahbaz Shah, State Counsel with Sajid Cheema DSP (Legal) and Ghulam Rasool S.I.

Through the instant criminal misc., petitioner/accused (*Muhammad Atif)* prays for post-arrest bail in FIR No. 270, dated 26.05.2021, Under Section 302, 324, 34 PPC, Police Station Khanna, Islamabad.

2- Initially the subject FIR was got registered by the petitioner against his ex-wife Mst. Jannat Khatoon, Naveed and an un-known person for the commission of murder of his son namely Rehan. Subsequently, during investigation, it transpired that in order to take revenge from his ex-wife and co-accused Naveed, petitioner hatched a false story while in fact he himself committed the murder of his son and pursuant to disclosure got recovered weapon of offence. In addition, he also confessed his guilt during investigation.

3- Learned counsel for the petitioner contended that petitioner has falsely been implicated in the instant case; that there is no direct evidence against the petitioner; that he had been implicated at the instance of his ex-wife and co-accused Naveed; that investigation is complete; that challan has been submitted and further incarceration of the petitioner would serve no useful purpose. Learned counsel relied upon case laws reported as***2021 SCMR 522, 2012 SCMR 1137, 2022 P.Cr.L.J. 173 (Peshawar), 2018 P.Cr.L.J. Note 43 (Peshawar) 2019 YLR Note 72 (Sindh), 2021 YLR Note 73 (Sindh)*** and ***2021 YLR Note 29 (Lahore)***.

4- On the other hand, learned State Counsel assisted by DSP (Legal) advanced the details of the investigation that ultimately led to trace out the real culprit, who was none other than the complainant/petitioner himself. According to the learned State Counsel, during investigationthe version of the petitioner-then complainant was found false while he himself found guilty for the murder of his son aimed at to teach lesson to his ex-wife who got separation by way of a decree of the Court on the basis of *Khula*.

5- Heard, record examined.

6- It is settled principle that while deciding a bail petition only tentative assessment of the material collected by the prosecution is to be made while deeper appreciation is not permissible. In case the material collected during the investigation, on tentative assessment, lends support in forming opinion qua involvement of any onein the commission of alleged offence, same can be made basis not to exercise discretion in favour of an accused.The qualification of the material has been set as "*tangible*". Reliance is placed upon case of '*Muhammad Sarfraz Ansari. v. State and others'* (**PLD 2021 SC 738**).

7- In the present case, the deceased boy is son of the petitioner, who in order to settle score with his ex-spouse opted to play havoc. Initially, in order to cover up the crime, petitioner reported the matter to the police with a story of involvement of his ex-wife, Naveed and unknown person but during investigation, the real facts came to light. The petitioner admitted his guilt during investigation and identified the place of occurrence. He also got recovered weapon of offence i.e. blood stained Churri and as per report of PFSA, it was stained with human blood while the MLR and post-mortem report also lends support to the allegations.

8- On tentative assessment it reveals that sufficient tangible evidence exists 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(1) Cr. PC and entails capital punishment.

9- An accused, alleged to have committed an offence, would be subject to a distinct legal regime, certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody his release is to be regulated by the provisions of the Code Of Criminal Procedure 1898 and he has to make out a case within the statutory frame provided thereunder. Reliance is placed upon case titled as *Abid Hussain v. Tassawar Hussain & another* (**2021 SCMR 518**).

10- The case laws relied upon by the learned counsel for the petitioner does not extend any help to the petitioner due to having distinct facts and circumstances.

11- In view of above, petitioner has not been able to make out a case for grant of post-arrest bail at this stage. Consequently, captioned criminal misc. is accordingly **dismissed.**

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

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR Ansari