

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-950 of 2013.

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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For hearing.

24.10.2016.

Mr. Shabir Hussain Memon, Advocate for applicants.

Applicants are present on interim pre-arrest bail.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

Mr. Imamuddin Otho, Advocate for complainant.

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Through instant bail application, applicants seek pre-arrest bail in Crime No.191/2013, registered at Police Station Jamshoro, under sections 302 and 34 PPC.

2. It is alleged that body of deceased Roshan Ali was found in the bungalow of Executive Engineer Javed Memon. Contents of F.I.R. further reveal that prior to incident threats were issued by the applicants to the deceased that they would cause harm to him.

3. Learned counsel for applicants, *inter alia*, contends that occurrence is unseen, except words of threats there is no iota of evidence against the applicants; applicants were granted ad-interim pre-arrest bail and since three years they are attending the trial Court; during such period, they have not misused the concession of interim pre-arrest bail. He has filed case diaries through statement, which are taken on record.

4. Learned counsel for complainant contends that names of applicants appear in F.I.R. and this is a case of murder, therefore, they are not entitled for bail.

5. On the other hand, learned A.P.G. at the outset, contends that except version of threats there is no speck against the applicants.

6. Heard learned counsel for the parties and perused record.

7. Perusal of F.I.R., shows that except allegation of threats there is no incriminating material available against the applicants. Needless to add that mere appearance of name in FIR is not sufficient to keep one behind the bars but it is the material which *prima facie* establishes existence of reasonable grounds to believe one *linked* with offence or *otherwise*. The perusal of the Section 497 of the Code shall make it clear that grant or refusal of bail is never subject to mere appearance or non-appearance of one's name in FIR but the term *reasonable grounds* is used. It is also well settled principle of law that suspicion *how highsoever* may be shall not be a substitute to the term(s) 'evidence' or 'reasonable grounds' thus, I may safely hold that mere suspicion alone in absence of any other *incriminating* material will *by itself* make the applicant/accused entitled to be released within meaning of Section 497(2) Cr.PC. A reasonable doubt towards guilt of accused should also be extended to accused even at bail stage. The reference in this regard can well be made to the case of Zaigham Ashraf v. State (2016 SCMR 18).

Further, the applicants are on interim pre-arrest bail since 2013; there is no allegation of misuse of such interim bail and there can be no denial to the legal position that if at end of the day the applicants are found guilty they can well be given their due by trial Court. Under these circumstances, *prima facie*, this is a case of probe, hence falls within the scope of further inquiry, which can be considered even while exercising jurisdiction for pre-arrest bail. Accordingly, interim pre-arrest bail earlier granted to the applicants vide order dated 14.10.2013, is confirmed on same terms and conditions.

Bail application stands disposed of.

JUDGE

