

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

Cr.Bail.Appl.No.S- 967 and 1013 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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24.10.2016.

Mr. Ahsan Gul Dahri, Advocate for applicants a/w applicants.
 Mr. Muhammad Jameel Khan, Advocate for complainant.
 Mr. Shahzado Saleem Nahiyoon, A.P.G. for the State.

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Through captioned bail applications, applicants/accused Abid Hussain, Arbab Ali and Mushtaque seek pre-arrest bail in case registered u/s 302, 34 PPC arising out of FIR No.73/2014 of PS Hala.

2. Brief facts of the prosecution case are that complainant Rasool Bux lodged FIR alleging therein that on 12.08.2014 he and his cousin Tahseem, (Zamindar and businessman) came in Hala; after finishing their work were returning back when Tahseem told him that he would come after obtaining outstanding dues from Mushtaque Dahri but he did not come. The complainant, his brother Amir Din and Abdul Jabbar *then* went to Hala in search of Tahseem where they came to know that one Bughio of Sandhan village has sustained blows and is lying in Taluka Hospital Hala. They went to Hospital and found Tahseem lying unconscious, having injuries on his head and other parts of the body; wherefrom injured was shifted to LUMH but, being in a serious condition, was taken to Liaquat National Hospital Karachi where he regained his senses and told to complainant that he met and demanded money from Mushtaque Dahri, who leaving him in street, went into his home for arranging money but at about 10.00 p.m. he (Mushtaque Hussain), Abid Hussain and Arbab Ali, duly armed with lathies, came and caused

him lathi blows with the result he went unconscious. On 13.08.2014 Tahseem succumbed to his injuries, his dead body was brought at Taluka Hospital Hala and after postmortem examination it was handed over to complainant. After exequies of deceased, complainant registered FIR on 14.08.2014.

3. Learned counsel for the applicants argued that the alleged incident is unseen; that complainant is close relative of the deceased and no independent witness is cited in the case; that applicants have been implicated on the basis of dying declaration statement before complainant; that no specific role is assigned to any of the applicants; that there is delay of two days in lodging the FIR; that the story set-up in the FIR is concocted one and due to enmity applicants have been implicated in this case; that police is behind them to arrest with ulterior motives and to harass and humiliate them. Lastly, he prays for grant of pre-arrest bail.

4. On the other hand, learned counsel for the complainant stated that since applicants/accused have got protective bail from the Honourable High Court, they came to know about filling of this application before this Court today; that the name of deceased is Tahseen but due to mistake or otherwise in bail application as well in photocopy of true copy of FIR his name is shown as Tahseem and Naeem. He further contends that due to demand of repayment of his outstanding dues by complainant, all the three accused have committed his murder brutally; that no enmity or malafide is alleged against the complainant party. Per learned counsel one Rasool Bux father of accused Mushtaque after the death of deceased on 13.08.2014 registered FIR No.78/2014 at PS Hala wherein story was set-up that deceased was seen while committing theft of motor machine at their cattle pond where present accused alongwith others caused him injuries to make their defence and this document is sufficient to establish the involvement of applicants/accused in the commission of offence. Lastly, he prays for dismissal of this application.

5. I have given my consideration to the arguments advanced by the parties counsel and have gone through the available data *carefully*.

6. There is no denial to the fact that incident is an *unseen* one but the involvement of the present applicants / accused is claimed by *prosecution* to have been result of last words of the deceased *himself* which, *alone*, legally can hold the conviction if proved as per requirement of law. This is *however* not the proper stage to examine the legality and validity of such claimed *last* words of the deceased as it shall cross *tentative* assessment and shall *fall* into deeper appreciation. The applicants' party does not claim to be on any *serious* enmity with the present complainant party hence the complainant, a blood-relation, *prima facie* has no reason to falsely involve the present applicants / accused in murder charge of his blood-relation. Such claim *however* shall, at proper stage, be tested by cross-examination but tentative assessment in absence of proof of any *serious* enmity would neither help the applicants to insist such plea *as* further inquiry nor it shall be termed as '*malafide on part of complainant party*' which, *otherwise*, is a requisite condition to succeed in an attempt for pre-arrest bail. Further, there are no allegations of political victimization or malafide on the part of police *too*. A reference in this regard can well be made to the case of Muhammad Sadiq and others v. State & another 2015 SCMR 1394 wherein it is held that:

"Since, there can be no denial to the well established principle of law that considerations for pre-arrest bail are totally different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is duty of accused to establish and prove *mala fide* on the part of the investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offences with *mala fide* and ulterior motives.'

7. As regard, non-specification of injuries, caused by each of the applicants / accused, it would suffice to say that as per last *words* of the deceased, he was made to wait in street and then all applicants/accused came, duly armed with weapons, came and caused him injuries. Such acts, if are gathered, are sufficient to *prima facie* show common object *least* common intention. The applicants and prosecution *however* shall have opportunity to prove or disprove respective claims but at proper stage which, I am safe to say, is not the present one because it (*bail stage*) only permits tentative assessment which too with reference to prosecution material.

8. As regard the plea of delay in lodgment of FIR, it would suffice to say that such delay has been explained by complainant that they had taken away the deceased to Hyderabad and then to Karachi, thus, it has no fatal effect to the prosecution case at this stage.

9. The available record shows that the applicants' have attempted to bring their case within meaning of *further inquiry* by referring to the FIR, lodged by Rasool Bux, the father of accused Mushtaque wherein time and place of incident is one and same. Since, per case of *Liaquat Ali V. State* 2013 SCMR 1527 it is held that:

"4., it may be observed at the outset that every cross case does not necessarily makes the guilt of the accused a matter of further enquiry and the Courts in such cases **may resort to a tentative assessment** of the material placed before them to form an opinion whether a case of further enquiry qua an accused is made out or not.

10. Though, per law the applicants' are to establish *mala fide* for grant of pre-arrest bail, however, I would attend such plea of the applicants while making *permissible* tentative assessment.

11. It is also a matter of record that Rasool Bux (father of accused Mushtaque) lodged FIR bearing No.78/2014 whereby he claimed that accused Taqseem entered

in their cattle pond with intention to commit theft but he and other villagers awakened and caused injuries to him however, he fled away. Time and place as shown by accused party in their FIR as well in the instant FIR is same. It is strange that one person who with intention of offence of theft entered in a village and had received the injuries by the villagers, succeeded to run away whereas such story is negated by the police and as per information of the villagers they found him in injured condition adjacent to the house of Rasool Bux.

12. As per available material of the instant case, it is matter of record that on information of one villager police party reached at the village Saindad Dahri; found injured Taqseem adjacent to the house of Rasool Bux Dahri (father of accused Mushtaque); brought him in Hospital for treatment from where he was referred to Civil Hospital Hyderabad and after available treatment at Hyderabad Hospital and then was referred to Karachi. Such circumstances were backed by police officials in their statements which (*circumstances*) do hold last *words* of deceased to extent of his claim of going to accused Mushtaque Daheri and receiving injuries there. Thus, tentative assessment of *two* pleas even does not help the applicants' to bring their case within meaning of Section 497(2) of the Code.

13. The above discussion *prima facie* show that the applicants have failed to establish any *malafide* on part of complainant party and investigation agency and even have not been able to bring their case within meaning of *further enquiry* as ample evidence is available against them which *prima facie* connects them in a case of capital punishment hence, I am quite safe to conclude that no case for grant of pre-arrest bail is made out. Accordingly, the bail plea of the applicants / accused is hereby declined. In consequence thereof interim pre-arrest bail, earlier granted to the applicants/accused, stood recalled.

JUDGE

