

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
Crl. B.A. No. S-499 of 2016.

**Applicants:** Qamaruddin Mahar and 4 others  
Through Mr. Achar Khan Gabol  
Advocate

**Complainant:** Mst.Kareema  
Through Mr. Manzoor Hussain A. Ansari  
Advocate.

**The state:** Through Mr. Sardar Ali Shah DPG.

**Date of hearing:** 17<sup>th</sup> June, 2019.

**Date of Order:** 21<sup>st</sup> June, 2019.

**ORDER**

**Adnan-ul-Karim Memon, J-** The Applicants, namely Qamaruddin Mahar, Amjad Hussain Shah, Akram Din, Azizullah and Ghulam Ali are seeking Pre-arrest Bail in Crime No.04/2015, registered for offences under section 302, 365, 344, 148, 149, PPC at Police Station, Patni District Sukkur.

2. The prosecution has set-up the case against the present Applicants on the plea that son of complainant namely Pervaiz Ahmed Shaikh contracted love marriage with Mst. Parveen daughter Ali Gul Shaikh. Thereafter a JIRGA was held, in which her son Pervaiz Ahmed and Mst. Parveen were declared as Karo-Kari (Siyah-Kari) and they vowed to get Pervaiz Ahmed killed on the aforesaid pretext. As per record, on 29.8.2015, the couple, due to fear of death, filed Constitutional Petition bearing No.3131 of 2015, before this Court and this Court vide order

dated 19.1.2016 restrained the Respondents not to cause harassment to the couple. Prosecution has alleged that before passing of the aforesaid order, petitioner Pervaiz Ahmed Shaikh (now deceased) was forcibly taken away by the present applicants from his house and committed his brutal Murder, in connivance with the private persons by showing a fake encounter. However, on 26.9.2015, such F.I.R of the aforesaid incident was lodged by the directions of this court vide order dated 22-9-2015. The Applicants have taken the plea that they performed their duty in accordance with law and no offence was committed by them. They relied upon the criminal record of the deceased and others, who were killed in Police encounter and in the Investigation report, they were declared innocent in the aforesaid crime. As per record the Crime No.04/2015, registered for offences under section 302, 365, 344, 148, 149, PPC at Police Station, Patni District Sukkur was recommended by the Investigating officer under B-class (false case), however, on the directions of this Court, Police Inspector Ghulam Ali Jumani, who was appointed as Inquiry Officer to probe the matter between the parties and was directed to conduct a detailed inquiry in respect of four FIRs bearing Nos.4/2015 of Police Station Patni, F.I.R No.02 of 2015 Police Station, Patni, FIR No.47 of 2015 of Police Station Sarhad and FIR No.154 of 2015 of Police Station Rohri, who submitted a detailed inquiry report before this Court through DPG, however he opined that the Crime No.4/2015 of Police Station Patni, was liable to be sent up for trial against present applicants/accused persons. Initially the Applicants being aggrieved by and dissatisfied with the inclusion of their names in the aforesaid Crime No.4/2015, approached the Court of learned Sessions Judge Sukkur for grant of Pre-arrest Bail, however on administrative grounds, their Bail Application was transferred to the Court of Additional Sessions Judge-

Sukkur and they were granted Pre-arrest Bail vide order dated 01.10.2015, but subsequently their ad-interim bail was recalled vide order dated 27.7.2016 on the premise that the accused police official skilled the deceased person while they were in their custody at the behest of private persons as they were annoyed with free will marriage of Mst. Parveen with deceased Pervaiz Shaikh. The Applicants being aggrieved by and dissatisfied with the rejection of their Pre-arrest Bail Application has approached this Court on 10.8.2016, and they were granted ad-interim Bail in the aforesaid crime by this Court vide order dated 10.8.2016.

3. Mr. Achar Khan Gabol, learned counsel for the Applicants has briefed the Court on the facts that on 05.09.2015, accused Pervaiz Ahmed Shaikh (deceased) and others had lost their lives in police encounter, which took place and such FIR No.02/2015 was lodged by S.H.O Qamardudin Mahar/Applicant in respect of the said incident on the same day at Police Station, Patni for offences under sections 353, 324, 148, 149, 412, 427, PPC; that deceased Pervaiz Ahmed Shaikh and others had launched a murderous assault upon a police party and in self defence the police party had fired back, resulting in death of deceased Pervaiz Ahmed Shaikh and two others. After completion of the investigation a Challan was submitted in the case before the Court of Session for trial of the accused persons implicated therein; that the complainant has filed a counter blast of that case in order to get revenge; that investigation was carried out and the Applicants were found innocent on the premise that during investigation, being carried out by DSP Liaquat Ali Abbasi, he besides other formalities and collection of criminal record of deceased Parvez Ahmed has also got 164 Cr.P.C statement of Mst. Parveen, Panjal and Sarfaraz recorded from the

concerned Magistrate. PW Sarfaraz is complainant of robbed tractor which is said to have been robbed by deceased and others, thus the case against the applicants was submitted under 'B' Class in the aforesaid crime before the concerned Magistrate; that during the course of investigation no conclusive finding has been given against the present Applicants by the Investigating Officer. Learned counsel for the Applicants stated at the bar that the case of Applicants requires further enquiry into their guilt as to whether who was aggressor and whether they have committed the purported offence or not as portrayed by the prosecution in the counter case, that Bail cannot be withheld as a matter of punishment; that the Investigating Officer has already opined in favour of Applicants by disposing of the case against the applicants under B-Class, therefore, the case of the Applicants needs further Probe into their guilt; that the case of the Applicants is based on the aforesaid version of the applicants as admitted by the complainant in the aforesaid crime, but has portrayed another story, which cannot be considered at the bail stage, therefore, their false implication in the instant crime cannot be ruled out; that there is a grave apprehension of the Applicants being arrested by the police concerned and there is malafide intention on the part of complainant to rope the Applicants in the present crime as well as police. He further states that NBWs have been issued by the learned trial Court, after declining the Bail Application of the Applicants by the learned trial Court vide order dated 11.05.2019, while confirming the Bail of other co-accused, without assigning valid reasons as set out in section 498 and 498-A Cr.PC. He states that nothing has been recovered from the Applicants during the course of investigation and no specific role has been assigned to them in the investigation to connect the present applicants in the purported crime even complainant has

managed the story that her son and two witnesses if Nikah were taken away by the police. He has relied upon copy of Final Report submitted by the I.O. He further relied upon the recommendation of I.O in the Final investigation report; that after obtaining ad-interim bail from this Court, the applicants have been attending the trial Court regularly. He lastly prayed for allowing the pre-arrest bail to the Applicants.

4. On the contrary, Mr. Manzoor Hussain A. Ansari, learned counsel for the complainant has vehemently opposed the grant of bail to the Applicants on the premise that complainant's son namely Pervaiz Ahmed was cold-bloodedly murdered by the applicants/police through a managed and staged encounter where-after an FIR containing a false story was registered at the local Police Station in respect of the incident at the instance of a police official depicting the deceased as the aggressor. He has maintained that in some ensuing administrative inquiries the applicants/ police were found to be guilty of a calculated murder; that they have been assigned specific role of direct firing upon deceased in the aforesaid fake encounter, therefore, they succumbed to their injuries on the spot and false F.I.R was registered against the deceased persons. As such the Applicants/accused are not entitled for confirmation of interim Pre-arrest Bail.

5. Mr. Sardar Ali Shah, DPG has pointed out that complainant in person appeared before this court and raised her no objection for confirmation of bail of the applicants, such version of the complainant was recorded by this court vide order dated 11.1.2019 and 18.2.2019, however, he conceded the aforesaid position for confirmation of interim Pre-arrest Bail to the Applicants and referred the affidavit of the complainant filed in this regard along with statement dated 8.2.2019 available on record. He next argued that, in view of the aforesaid affidavit

of the complainant, the applicants' case does meet the basic parameters of grant of pre-arrest Bail as provided under section 498 and 498-A Cr.P.C, thus this Court can exercise the discretionary powers and concession of pre arrest bail can be extended to the applicants under the peculiar circumstances of the case. He fairly conceded that prima facie the case of prosecution and defence is of two versions i.e. one put forwarded by the applicants and second by the prosecution; therefore, the basic rule is bail and not jail.

6. I have heard the parties at length and perused the material available on record and considered their submissions.

7. Tentative assessment of the record reflects the following aspects of the case:-

i. FIR No.04/2015 lodged by the complainant was initially disposed of under 'B' Class but subsequently challan was submitted in the aforesaid crime.

ii. Mother of deceased filed petition before this Court and Inspector Ghulam Ali Jumani was appointed Inquiry Officer, who carried out the exercise and submitted report dated 19.10.2015 before the competent Court of law. He opined that the crime No.154/2015 u/s 395 PPC of PS Patni/Rohri (District Sukkur) is genuine and liable to be sent up u/s 512 Cr.P.C against absconding accused. As such, three accused of this case namely Pervez Shaikh, Shahmore Shaikh and Ali Muhammad Shaikh have been killed so that their names should be struck off from case.

iii. Crime No.02/2015 lodged by the applicant Qamaruddin Mahar u/s 353, 324, 148, 149, 412, 427 PPC of PS Patni is false.

iv. Learned trial Court in the impugned order observed as under:-

“The allegations that the deceased were killed at the behest of the private applicants as they were annoyed with free will marriage of Mst. Parveen with deceased Pervaiz Shaikh require further inquiry in view of insufficient material available so far. S.I.P Abdul Hakeem Langah was not member of the police party that allegedly killed the deceased in encounter. **The allegations against him of being involved in extra judicial killing of the deceased also requires further inquiry. I am, therefore, of the considered view that he and all the private applicants are entitled to concession of bail. Interim pre-arrest bail granted to applicant-accused S.I.P Abdul Hakeem Langha, Dhani Bux son of Muhammad Ali, Abdul Rasheed son of Dhani Bux, Sajjad Hussain son of Pathan, Pathan son of Haji Shaikh, Abdul Rahman son of Manghan Shaikh, Ali Gul son of Dholoo Shaikh and Gul Hassan son of Dholoo Shaikh is hereby confirmed upon same terms and conditions.** However, pre-arrest bail plea of applicants S.I.P Qamaruddin, H.C Amjad Hussain Shah, P.C Muhammad Akram, P.C Azizullah and P.C Ghulam Ali is hereby dismissed. Interim pre-arrest bail granted to them is hereby recalled.”

8. To elaborate on the main ground taken by the learned defence counsel that prima-facie the case in hand appears to be of two versions, out of which, one version of the prosecution is that son of complainant namely Pervaiz Ahmed Shaikh contracted love marriage with Mst. Parveen daughter of Ali Gul Shaikh, thereafter a JIRGA was held, in which her son Parvaiz Ahmed and Mst. Parveen were declared as Karo-Kari (Siyah-Kari) and they vowed to get Parvaiz Ahmed killed on the aforesaid pretext by showing fake encounter. The second version of the Applicants is that they performed their duty and no offence was committed by them; that accused Pervaiz and others had launched a murderous assault upon a police party and in self defence the police party had fired back resulting in death of accused Pervaiz and others.

9. An important question arises in the present case, as to whether on the basis of pleas of two versions; concession of bail can be extended to the Applicants/accused or not?

10. To answer the aforesaid question, while deciding a bail application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C., nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant laws have to be considered. I am fortified by the decision of Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State (2010 SCMR 1221).

11. I am of the tentative view that at the stage of consideration of Bail Application, either Anticipatory or Regular Bail, such plea of two versions of the matter could be taken into consideration. The Honorable Supreme Court has already held in various pronouncements that if no separate FIR can be registered for any new version of the same incident, then how can such new version be recorded and investigated by the police. In my view, the plea of fake encounter as alleged by the complainant, being a distinct plea is required to be substantiated by adducing cogent and concrete evidence merely relying upon the ipsi-dixt of inquiry officer is not sufficient until and unless, the sufficient material is placed on record before the competent court of law to connect the applicants in the aforesaid crime for which trial Court yet to adjudicate the matter as this Court can only tentatively assess the matter at the bail stage. As far as the principles governing grant of bail in 'cross cases' is concerned, the judicial consensus depending on the peculiar facts and circumstances of each case.

12. In the light of forgoing, in my view, to constitute a cross case, mere assertion of a counter case is not enough. This court has to tentatively assess that the parties, venue and the transaction, prima facie, lead to the result of a single incident narrated differently by the opposing party. The rationale being frivolous and false counter cases, which can



exaggeratedly be set up by the opposite party do not gain an advantage of the general rule and benefits arising out of a counter case. In cases of counter versions arising from the same incident, one given by the complainant in the FIR and the other given by the opposite party, bail is granted as a rule on the ground of further inquiry for the simple reason that the question as to which version is correct to be decided after recording of pro and contra evidence during the trial and also to ascertain which party was the aggressor or was aggressed upon and refusal of bail in such cases is an exception. I am fortified with the decision rendered by the Honorable Supreme Court in the case of *Fazal Muhammad* (1976 SCMR 391), *Shafiqan's vs. The State* (1972 SCMR 682) and *Khalid Mahmood vs. the State* (2013 SCMR 1415). Exception to the rule of grant of bail in cases of counter versions or cross cases, and in cases where specific and effective role is attributed to the accused, whereby, prima-facie, material on the record clearly suggests the connection of the accused with the commission of the offence. In counter versions of opposing parties, without specifying the effective role in causing the fatal injury leaves room for consideration to render a case within the purview of further inquiry, as provided under section 497 of Cr.P.C. My view is supported by the decisions rendered by the Honorable Supreme Court in the *Jaffar vs. the State* (1980 SCMR 784) and *Muhammad Aslam vs. the State* (1997 SCMR 251). Prima-facie, the aforesaid factual position of the present case shows that the prosecution itself has two versions vis-à-vis the applicant's, first of the complainant party according to which the applicants son was forcibly taken away by the police and was murdered in encounter and second of the applicants case according to which the encounter took place and accused persons were killed, whether the same encounter was fake or otherwise is yet to

be determined by the trial Court. All these considerations surely render the case against the applicant's one of further inquiry into their guilt. Thus under the given circumstances extra ordinary concession of Bail before arrest can be extended to the Applicants. Apparently, sufficient incriminating material has not been collected by the police, which may connect the Applicants with the alleged crime of calculate murder of deceased in a fake police encounter.

13. From the perusal of record it appears that the prosecution case clearly spelt out as discussed supra. I have also gone through the investigation of the Crime No.04/2015 as well as the recommendation of the I.O.; therefore, I am of the tentative view that the Applicants are entitled to concession of Pre-arrest Bail.

14. I have noticed that the Rule of consistency, which is also applicable in the present case for the simple reason that, if the order granting bail to an accused by the trial Court is supported by valid reasons, the same can form the basis for granting bail to a co-accused on the ground of parity and this Court can grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains valid reasons, while considering the relevant factors essential for granting Bail. Admittedly, the applicants are previous non-convict. They have already joined the investigation, which is complete to their extent; therefore, no useful purpose would be served by sending them behind the bars when they are regularly attending the learned trial court, as per prosecution stance.

15. In view of the above facts and circumstances, I am of the tentative view that the Applicants/accused have made out a case for grant of Pre arrest Bail at this stage.

16. For what has been discussed above, the trial court has to determine the implication of the applicants in the aforesaid crime after recording evidence. Resultantly, the ad-interim pre-arrest bail already granted to the applicants vide order dated 10.08.2016 is hereby confirmed on same terms and condition.

17. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned trial Court is directed to record evidence of the parties preferably within a period of 4 months and submit compliance report, through Additional Registrar of this court within the stipulated period and in the meanwhile, if the applicants fail to appear before the learned trial court or any concrete evidence come on record against them, during trial, their Bail may be cancelled by the learned trial court without obtaining any order from this court.

18. The instant Bail Application stands disposed of in the above terms.

JUDGE

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