

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 922 of 2017

| Date | Order with Signature of the Judge |
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For hearing of bail application.

Date of hearing : **04-06-2018**

Date of order : **27-06-2018**

Applicants/accused : Through Mr. Fazal Haque Khan advocate

The State : Ms. Seema Zaidi, D.P.G

Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 753/2016 by the IVth Additional District & Sessions Judge, Karachi-Central, vide order dated 30.07.2016, the applicants/accused have approached this Court by filing instant bail application under Section 498 Cr.P.C, for pre-arrest bail in crime No. 160/2016 under Sections 302/34 PPC registered at P.S. Rizvia Society, Karachi.

2. Precisely facts of the prosecution story, as unfolded in 154 Cr.PC statement by the complainant Dildar S/o Muhammad Azam are that since birth he is residing at the address, as mentioned in column No.2 of FIR alongwith his family including his aunt now deceased namely Bilaqees. On 12.06.2016 at about 10:00 hours a quarrel took place in their Mohallah, hence in order to see her children his aunt Bilqees went outside the house, when she reached at Liaquat Chowk Labaik Chowk main Jaferia Imam Bargah Street, Bilal, Awais and Anus were firing with their pistols, they opened straight fires upon her due to which one bullet hit at her chest and she died at the spot. Hence present FIR.

3. Learned counsel for applicants/accused argued that applicants/accused are innocent and have been falsely implicated in this case with malafide intentions and ulterior motives. He next contended that Investigation Officer of this case has not traced out even a single evidence against the applicants/accused, hence he has submitted "A" class report before the learned Magistrate, therefore, it is crystal clear that applicants/accused have no concern with the present crime. He further

contended that co-accused has already been granted bail by this Court, therefore, on the rule of consistency, the applicants/accused are also entitled for bail. The learned counsel for applicants/accused contended that allegations against the applicants/accused are general in nature and the police officials are trying to humiliate them with malafide intentions and ulterior motive. He argued that since the complainant is not the eye witness of incident, therefore, it is doubtful that who had disclosed the names of applicants/accused to him. Amongst other arguments he lastly contended that there is no eye witness of incident and no specific role has been assigned to applicants/accused, therefore, case requires further inquiry. He prayed that bail of applicants/accused may be confirmed. Learned counsel for applicants/accused relied upon case reported as 1979 SCMR 09 (Muhammad Fazal alias Bodi Versus The State)

4. On the other hand, learned D.P.G vehemently opposed this bail application and argued that specific role has been assigned to applicants/accused. She further argued that case of applicants/accused falls within the ambit of prohibitory clause, hence they are not entitled for confirmation of bail, therefore, bail application may be rejected.

5. After hearing the arguments of both the parties and going through the relevant record with due care and caution, I am of the view that the complainant was not present at the place of occurrence, therefore, he has nominated the accused persons on hearsay evidence with no specific role of any accused to commit alleged offence. More particularly, no eye witness has disclosed the name of accused who fired upon the deceased lady. It is also come on record that some persons of complainant's community were also present at the time of this incident, equipped with arms. The learned counsel for the applicants/accused stressed on the point that the co-accused Awais, whose case is at par with the present applicants/accused has been granted pre-arrest bail which was later on confirmed, therefore, the ad-interim pre-arrest bail granted in favour of applicants/accused may also be confirmed on same terms and conditions In the case relied upon by

the learned counsel for applicants/accused i.e 1979 SCMR 09 (Muhammad Fazal alias Bodi Versus The State) the Hon'ble Supreme Court has observed that "*without going into the merits of the case and the various rulings mentioned in the petition for leave to appeal requiring out consideration and interpretation, we think that the petitioner should be released on bail on the principle of requirement of consistency in the same case and for the similar reason that the co-accused to who, a role similar to that of the petitioner was attributed had been so released by another learned Judge of the same High Court. This petition is, accordingly, converted into an appeal and disposed of as such*".

6. For what has been discussed above, the applicants/accused are entitled for confirmation of pre-arrest bail granted by this Court, vide order dated 13.06.2017 on same terms and conditions.

7. Needless to say that the observations recorded above are tentative in nature, therefore, learned trial Court shall not be influenced in any manner whatsoever.

JUDGE

Sajjad Ali Jessar