

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

Criminal Bail Application No. 500 of 2018

Date	Order with Signature of the Judge
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1. For hearing of Bail Application.

For Applicant/accused	:	Mr. Amir Jamil advocate
For Legal Heirs	:	Mr. Mumtaz Ali Maitlo
For State	:	Ms. Rahat Ahsan Addl: P.G
Heard on	:	22.06.2018
Decided on	:	26.06.2018

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 307/2018 by the trial Court, vide order dated 29.03.2018, the applicants/accused Syed Asif Ahmed S/o Syted Qadeer Ahmed has approached this Court by filing instant bail application under Section 498-A Cr.P.C, for pre-arrest bail in case FIR No. 53/2018, under Section 322/201/34 PPC, registered at P.S. New Karachi.

2. Precisely facts of the prosecution, as unfolded in FIR by complainant SIP Amanat Ali of PS New Karachi, are that on 01.0.2018, he was busy in investigation of another crime, when he reached at Sector-11/E, New Karachi, he came to know that on 28.02.2018 hours 1430 hours, due to leakage of LPG Gas Cylinder, fire incident took place in a Factory dealing with the work of polish of motorcycle parts situated at Plot No.264, Ali Muhammad Goth Sector-11/E, New Karachi, due to which some labourers namely (1) Umair S/o Sirajuddin, (2) Muhammad Farhan S/o Nisar Ahmed and (3) Shafiq Yaseen were burnt. The owner of said Factor namely Syed Muhammad Asif (applicant/accused) and foreman namely Adnan shifted them in a private hospital instead of Government Hospital and locked the Factory and did not inform the police about the incident. Later on Umair and Muhammad Faran succumbed to the injuries and died at Hospital and were buried by their legal heirs and did not take any

legal action. While Shafiq and Yaseen are still under treatment in private Hospital. The owner of Factory had not made arrangement in the Factory to face and fight any mishap, due to which they failed to control the fire and casualties occurred. It is further alleged in FIR that due to use of improper gas cylinders in the Factory and non-availability of fire extinguishers, negligence and carelessness of owner casualties occurred and two persons injured, hence present FIR.

3. At the very outset the learned counsel for applicant/accused argued that applicant/accused is peaceful, respectable and law abiding citizen of Pakistan and has good reputation amongst the society and he has been falsely implicated in present crime with malafide intention and ulterior motives. He next contended that there is inordinate and unexplained delay of more than three (03) days in lodgment of FIR. He further contended that deceased and injured persons were working in said Factory as labourers and the applicant/accused is/was being providing them all medical facilities, hence legal heirs of deceased as well as injured persons have not lodged any complaint against the applicant/accused. However, the police implicated the applicant/accused in present crime just to fulfill their illegal demands and to receive gratification. Amongst other the learned counsel for applicant/accused argued that prosecution story seems to be engineered and since the legal heirs have no objection on confirmation of bail, therefore, bail may be confirmed.

4. Learned Additional. P.G formally opposed the bail. However, the learned counsel for legal heirs of deceased as well as injured persons have raised no objection on confirmation of bail. He has

also filed affidavits of no objection of all legal heirs, which are available on record.

5. I have heard the arguments and also perused the available record. It appears that there is a delay of about three days in lodgment of FIR. Further, admittedly the applicant/accused was not present at the place of incident at the time of this incident. Section 321 PPC is attracted in present case, which reads as under:

321. Qatl-bis-Sabad. Whoever, without any intention to cause death of, or cause harm to, any person, does any unlawful act which becomes a cause for the death of another person is said to commit qatl-bis-sabad.

It has been held in 2011 P. Cr.L.J that “due consideration is to be given to the intention or sudden impulse”. It has also been held in 1992 P. Cr.L.J 1993 that “*Qatl-e-amd is a premediated murder, while qatl-bis-sabad is murder without intention. If accused has no intention to cause death, that would attract the provision of Section 321 PPC for the offence of qatl-bis-sabad but if there is an intention and preparation then, it would certainly amount to qatl-e-amd.*”

6. In view of the foregoing discussion it appears that it is sudden incident and applicant/accused has no intention to cause death and injuries to labourers working in his Factory. Further, the legal heirs of deceased and the injured persons have filed their affidavits to the effect that fire incident had taken place due to sudden leakage of LPG Gas and applicant/accused is innocent. The applicant/accused, vide his application dated 06.02.2018 has already informed the Sui Southern Gas Company that due to the garbage in the street besides Factory there is apprehension of mishap in case of leakage of gas valve and incident of fire may cause damage of life.

7. In view of what has been discussed above, the case of applicant/accused requires further inquiry, hence I feel no hesitation to confirm present bail. Accordingly, ad-interim pre-arrest bail granted earlier to applicant/accused vide order dated 02.04.2018 is hereby confirmed.

8. It is pertinent to mention here that observations recorded hereinabove are tentative in nature and will not prejudice the case of either party.

J U D G E

Sajjad Ali Jessar