

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-1023 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

16.02.2021.

Mr. Raja Jawad Ali Saahar, Advocate for applicants.
Syed Tarique Ahmed Shah, Advocate for the complainant.
Ms. Safa Hisbani, A.P.G for the State.

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ORDER

Irshad Ali Shah J:- It is alleged that the applicants with rest of the culprits in furtherance of their common intention committed murder of Nadeem by drowning him in water pond of tube well, for that the present case was registered.

2. The applicants on having been refused pre-arrest bail by learned 1st Additional Sessions Judge/MCTC Matiari, have sought for the same from this court by making instant application under section 498 Cr.P.C.

3. It is contended by learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant; F.I.R has been lodged with delay of about six days; the incident was unseen one; the alleged eye witnesses to the incident have been introduced subsequently by the complainant; the actual cause of death of the deceased could not be asserted; DNA report is negative and co-accused Hidayatullah and Allah Jurio have

already been admitted to post arrest bail by learned Trial Court. By contending so, he sought for pre-arrest bail for the applicants on point of further inquiry and malafide.

4. Learned A.P.G for the State and learned counsel for the complainant have opposed to grant of pre-arrest bail to the applicant by contending that they by not joining the investigation have misused the concession of interim pre-arrest bail, which was granted to them by learned Trial Court. In support of their contention, they relied upon case of *Nawazish Ali Vs. The State [2004 SCMR 1373]*.

5. In rebuttal to above, it is stated by learned counsel for the applicants that the applicants have not only joined the investigation but trial.

6. I have considered the above arguments and perused the record.

7. The FIR of the incident has been lodged with delay of about six days; such delay could not be overlooked. As per F.I.R, apparently the incident was unseen one. Subsequent to F.I.R by way of making further statement, complainant introduced PWs Ghulam Qadir and Mian Bux as eye witnesses to the alleged incident, which appears to be significant. No cause of death of the deceased could be asserted. The DNA report has not matched with the applicants, it is in negative. Co-accused Hidayatullah and Allah Jurio have already been admitted to bail. The applicants have joined the trial. In that situation, it is rightly being contended by learned counsel for the applicants that a

case for grant of pre-arrest bail in favour of the applicants on point of further inquiry and malafide is made out.

8. The case law, which is relied upon by learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In that case, the pre-arrest bail was declined to the accused for the reason that he did not join the investigation. In the instant matter, the applicants now have not only joined the investigation but trial.

9. In view of above, the interim pre-arrest bail already granted to the applicants is confirmed on the same terms and conditions.

10. The instant bail application is disposed of accordingly.

JUDGE

*Muhammad Danish Steno**