

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr.B.A.No.S-670 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For hearing of main case.

20.09.2019.

Mr. Ali Ahmed Palh, advocate along with applicants.

Ms. Safa Hisbani, A.P.G.

Mr. Rashid Ali Shah, advocate for the complainant.

=

Irshad Ali Shah J;- It is alleged that the applicants in furtherance of their common intention have committed death of Hadi-ur-Rehaman son of complainant Habib-ur-Rehman by causing him fire shot injuries for that they were booked and reported upon.

2. The applicants on having been refused pre arrest bail by the learned 5th Additional Sessions Judge, Hyderabad have sought for the same from this court by way of instant application under Section 498 Cr.P.C.

3. It is contended by the learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant; the witnesses of the complainant on investigation were not found to be available at the place of incident; on investigation police came to conclusion that case attracts the application of section 319 PPC which is bailable in nature and learned trial court has wrongly taken the cognizance against the applicants for an offence punishable u/s 302, 34 PPC. By contending so, he sought for pre-arrest bail for the applicants on point of further enquiry and malafide. In support of his contention he

relied upon cases of ***Muhammad Mushtaq vs the State and another (2012 YLR 1148)***, ***Shahbaz vs the State (2001 YLR [Karachi] 1639)***, ***Abdul Razaaq vs the State (1999 P.Cr.L.J 847Lahore)***, ***Shafqat Bari vs the State (1994 MLD [Lahore] 1311)*** and ***Muhammad Rafique vs the State (2003 P.Cr.L.J [Lahore] 1151)***.

4. Learned A.P.G for the State and learned counsel for the complainant have opposed to grant of bail to the applicants by contending that the applicants being police officials have brutally committed the death of the deceased, then have influenced upon the investigation and learned trial court has rightly taken cognizance against applicants for offence u/s 302 r/w Section 34 PPC and such act of the learned trial court has attained finality up to the stage of this court with dismissal of the revision application of the applicants. In support of their contentions they have relied upon cases of ***Qasim and others vs the State (1984 SCMR 128)***, ***Muhammad Arshad and 2 others vs the State (1995 P.Cr.L.J 1663)*** and ***Nasir Abbas and another vs the State (1995 P.Cr.L.J 1671)*** .

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

6. The names of the applicants are appearing in FIR with specific allegation that they in furtherance of their common intention committed death of deceased Hadi-ur-Rehman by causing him fire shot injuries. In that situation it would be premature to say that the applicants being innocent have been involved in this case falsely by the complainant. The learned trial court has rightly taken the cognizance against the applicants for offence punishable under Section 302 r/w Section 34 PPC and such act

of learned trial court has attained finality upto the stage of this Court with dismissal of the revision application of the applicants ***as not pressed***. In that situation it would be unjustified to take contrary view by this court with regard to applicability of the penal section while deciding the bail application. If for the sake of argument, it is believed that the witnesses of the complainant were not available at the time of incident even then such fact is not enough to admit the applicants to pre-arrest bail in case like the present one wherein one innocent young man has lost his life. The deeper appreciation of the facts and circumstances even otherwise is not permissible at bail stage. There appears reasonable ground to believe that the applicants are guilty of the offence for which they have been charged.

7. The case law which is relied upon by learned counsel for the applicants is on distinguishable facts and circumstances. In those cases the accused were admitted to post arrest bail on point of further enquiry. In the instant case the applicants are seeking pre-arrest bail on point of malafide, which obviously is lacking.

8. In view of the facts and reason discussed above, it could be concluded safely that the applicants are not found entitled to grant of pre-arrest bail. Consequently, their application is dismissed. The order whereby the applicants were admitted to interim pre-arrest bail is recalled and vacated.

9. The instant application is disposed of accordingly.

JUDGE