

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

Cr. B. A. No. S-863 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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03.12.2021

Mr. Muhammad Ishaque Khoso, Advocate along with applicants

Mr. G.M. Leghari, Advocate tor Complainant

Mr. Fayaz Hussain Sabki, A.P.G.

**O R D E R**

**ADNAN-UL-KARIM MEMON, J.** - Through instant Criminal Bail Application, applicants Nand Lal, Muhammad Ali, Irshad Ali, Qadir Bux, and Karim Bux seek pre-arrest bail in Crime No. 149 of 2021 registered at police station Matli under Section 302 & 35 PPC.

2. Earlier vide order dated 30.9.2021 without touching merits of the case, the applicants / accused were admitted to interim pre-arrest bail and today it is fixed tor confirmation or otherwise.

3. Brief facts of the prosecution case as per FIR are that earlier cousin of complainant namely Qadir Bux moved applications to SSP Badin and others against accused persons regarding selling of Manpuri in their village under the supervision of police and for that monthly of lacs of rupees of police was fixed from their village, upon which accused persons were annoyed and lodged false FIRs against them, due to above, local police, as well as Tando Muhammad Khan Police, became inimical towards them. On 23.09.2020 at 8:00 p.m. his son Madad Ali @ Madoo went for purchasing Cigarette from Kolhi village and after some time, they heard cries and firing towards the houses of Kolhis; on firing and cries, his daughter Mst. Parveen, cousin Qadir Bux, Bachayo, and other villagers went, where his daughter saw accused Mumtaz Jokhio having Repeater, Noor Ahmed Jokhio having gun, Shakeel Jokhio having pistol, Nisar Jokhio having lathi, and Muhammad Hassan @ Baboo having hatchet in their hands were maltreating his son Madad All @ Madoo upon which his daughter Mst. Parveen tried to save him but accused persons hold

her from her hairs and separated, upon which she raised hue and cries, meanwhile accused persons after causing firearm injuries to his son were running along with weapons, meanwhile, Complainant came and they all went to Madad Ali whose intestines came out from his body and was raising cries; they arranged Qingqi Motorcycle wherein his daughter Mst. Parveen, cousin Qadir Bux, and Bachayo Jokhio took the injured in Qingqi and left for Tando Muhammad Khan, on the way at Bhai Khan link road four police mobiles were already present in which Nand Lal DSP Tando Muhammad, Irshad Ali Shahani SHO PS Tando Muhammad Khan, Muhammad Ali Zaunr SHO Shaikh Bhirkio, Karim Bux Nizamani HC Tando Muhammad Khan, Qadir Bux Sahito Incharge PP Phalkara and 2/3 unknown police officials encircled them and forcibly taken away injured Madad Ali, they saw that Madad Ali was alive and was raising cries that police would murder him. Subsequently, they reached government Hospital Tando Muhammad Khan where the above-named police officials were present, they published the news in Media that Madad Ali has been murdered in police encounter, meanwhile at 4:00 am Shaikh Bhirkio police handed over the dead body to them, they came at SSP Office Tando Muhammad Khan at night along with dead body and protested, therefore, SSP Tando Muhammad asked them to bury the dead body and lodge FIR, thereafter they brought the dead body to Indus Hospital Tando Muhammad where doctors conducted X-Rays and in X-Rays they saw bullets of Repeaters and guns and thereafter buried the dead body. On the next day, they went to SSP Tando Muhammad Khan who asked them to wait for post mortem report. On 28.09.2020 duty doctor Tando Muhammad Khan issued postmortem report, which was brought to SSP Tando Muhammad Khan who said that the place of incident i.e. houses of Kolhi situated in Den Sehrat, does not come within the jurisdiction of Tando Muhammad Khan police station but it comes within the jurisdiction of Matli police station hence they shall lodge the FIR at Matli, thereafter he went to Matli police station where ASI refused to lodge FIR against the police officials and also refused to lodge FIR as per his verbatim; therefore, he prayed to direct SHO Matli to lodge FIR against all accused regarding the murder of his son as they in furtherance of their common intention murdered his son Madad Ali alias Madoo by firing in a false police encounter. Such FIR was registered.

4. Earlier the applicants filed bail applications under Section 498 Cr.P.C. bearing No. 1157 of 2021 before learned Sessions Judge, Badin which was dismissed by learned 1<sup>st</sup> Additional Sessions Judge, Badin vide order dated 29.09.2021, hence this bail application.

5. Mr. Muhammad Ishaque Khoso learned counsel for the applicants/accused submits that the applicants are innocents and have been involved in this case due to enmity as the deceased and other persons of complainant party are hardened criminal and are/were involved in many criminal cases; that the complainant in first episode involved the private persons in commission of offence and it has been alleged that firing was made by private persons upon deceased; that postmortem report also reveals that deceased sustained pellet injuries or firearms which discharging pellets and no any bullet injury was found on the person of deceased; that there is no eyewitness to support the contention of complainant that any encounter was committed; mere allegation has been made in the FIR, hence it requires further inquiry; that applicants/accused are responsible police officials and if they will not be granted bail, their respect and reputation will be spoiled; that the case of complainant is of two versions and it will be proved after trial that which version is true and who are responsible for murder of deceased; that the applicants / accused are government servants, if they are not granted bail they will suspended from their job due to which they as well as their family will be seriously prejudiced; that applicant / accused are government servants as such there is no apprehension of their absconsion; that the deceased and complainant were involved in many criminal cases at various police stations specially at police station Tando Muhammad Khan and police Station Phalkara, thus the complainant malafidely involved the applicants/accused in this case after consultation and due deliberations.

6. Learned A.P.G assisted by learned counsel for complainant vehemently opposed the grant of bail to the applicants / accused.

7. Tentative assessment of record reveals the following position of the case:-

- a) This Court vide order dated 17.9.2021 in Cr. Misc. Appl. No. S- 564 of 2020 directed to register FIR No.149 of 2021 under section 302, 35 PPC at police station Matli regarding the incident of 23.09.2020 of 2000 hours against the applicants.

- b) Son of the complainant was brutally murdered allegedly by DSP Nand Lal and others with the help of other police officials.
- c) Their pre-arrest bail was declined by the trial court on 29.9.2021 on the premise that they failed to prove malafide intention of complainant/police.
- d) Record reveals that deceased Madad Ali sustained injuries and the same fact has been confirmed by the investigation officer.
- e) Postmortem report of the deceased reveals that his dead body was brought to the hospital.
- f) Prima-facie Inspector Muhammad Ali intentionally confined an injured person and waited for his death.
- g) The report of Judicial Magistrate reveals that FIR Nos. 69 and 70 of 2020 of PS Shaikh Bhirkio were lodged on behalf of the state by P.I Muhammad Ali, such FIRs also does not disclose the presence of accused Nandlal, Irshad Ali, Qadir Bux, and Karim Bux.
- h) That neither the above accused is cited as witness in FIR Nos. 69 and 70 of 2020 of PS Shaikh Bhirkio. However, it has been concluded by the investigation officer that the above FIR Nos. 69 and 70 of 2020 of PS Shaikh Bhirkio are lodged just to gain personal benefit and DSP Nandlal is the investigation officer of that FIRs for which the reports has been submitted before the competent court law.
- i) Cognizance had taken by learned Judicial Magistrate against accused Mumtaz Ali s/o Muhammad Siddique Jokhio Kori, Noor Ahmed s/o Muhammad Malook Jokhio, Nisar s/o Manzoor Jokhio, Muhammad Hasan @ Babo s/o Gul Hassan Jolkhio u/s 302, 35 PPC whereas, cognizance was also taken against the accused P.I Muhammad Ali s/o Nabi Bux Zanur u/s 302, 342 PPC.
- j) That complainant appeared and submitted that investigation officer had mlafiedly put the names of applicants in Colum No.2 with blue ink whereas the applicants were seen by the witnesses who identified them and they took the deceased custody when he was in injured condition from his sister; and, other witnesses from the rikshaw; and they disclosed that his son died in an encounter with the police party.
- k) Defence theory is that the deceased was fired by private accused who have been already challaned in the present case.
- l) Learned Magistrate rejected the above theory/report of investigating officer vide order dated 17.11.2021.

8. I have heard learned counsel for the parties and perused the record of the case. Learned trial Court has declined the relief of pre-arrest bail to the applicants observing that pre-arrest bail is an extraordinary relief and can only be extended to an innocent person who is implicated in the case based on malafide, but the applicants have failed to point out any malafide.

9. In considering whether to enlarge; and/or cancel the bail granted to the applicants, earlier without touching merits of the case, this Court has also to consider the gravity and nature of the offense, prima facie this is a very serious case and cannot be treated as an ordinary case. The applicants who are policemen are supposed to uphold the law, but far from performing their duty, prima-facie, they appear to have operated as criminals. Thus, the protectors have become the predators. Their version was that the deceased was killed by a private party; however, a police encounter has been shown which was later on found to be false during investigation. Primarily, fake `encounters' are nothing but cold-blooded, brutal murders by persons who are supposed to uphold the law. Hence there is a prima facie case against them; as such extraordinary relief cannot be extended to the applicants in such circumstances.

10. In my opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offense is committed by policemen such situation is changed altogether because they do an act contrary to their duties. In such a scenario, this Court put the policemen on alert that they will not be excused for murdering in the name of `encounter' on the pretext that they were carrying out the orders of their superior or politicians, whoever high. The `encounter' philosophy is a criminal philosophy, and all policemen must know the consequences. Primarily, if a policeman is given an illegal order by his superior to do a fake `encounter', he has to refuse to carry out such illegal order; otherwise, he will be booked under the penal law for murder.

11. In view of the above, the instant bail application stands dismissed. Consequently, the interim bail granted to them vide order dated 30.09.2021 is hereby recalled. Resultantly, the trial Court is directed to conclude the trial within four months. In case the trial is not concluded, within the stipulated period, then at least the complainant must be examined.

12. Needless to mention here that the observations made hereinabove are tentative and the same shall not prejudice the case of either party at trial stage.

JUDGE