

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

Cr. Bail Application No.S-662 of 2018

Applicant(s): Azizullah Khan & others, through
Mr. Nasrullah Solangi, Advocate.

The State: Ali Anwar Kandhro, DPG.

Date of hearing: 21.12.2018

Date of decision: 21.12.2018

ORDER

KHADIM HUSSAIN TUNIO, J:- Through captioned bail application, the applicants seek their admission to pre-arrest bail in crime No. 33 of 2018 registered at P.S Guddu for the offences under Sections 380, 506/2, 147, 148, 149 PPC.

2. Precisely, facts of the prosecution case are that on 04.10.2018, the complainant Ihsan Ahmed Khoso lodged the FIR at PS Guddu stating therein that he owns the agricultural land in De Masoo Wala Taluka. On 24.09.2018, the complainant along with his brothers were standing at the land when at about 06:30 PM they saw and identified 12 accused persons armed with TT pistols while the remaining accused came on a tractor trolley. The accused aimed their weapons at the complainant party and asked the rest of the accused to take their grain. The remaining accused loaded all the grain into the tractor trolley and all the accused persons fled away along with the grain of the complainant. The complainant after consulting with the Nek Mard and on his advice went to the Police Station to lodge the FIR.

3. Mr. Nasrullah Solangi, learned counsel for the applicants has contended that the applicants are innocent and have been

falsely implicated by the complainant, with ulterior motives; that the complainant and PWs are brothers, hence are interested in the case; that the complainant and his cousins have filed four Criminal Misc. Applications against the applicants on the grounds that they have committed theft which were dismissed by the learned 1st Additional Sessions Judge, Kandhkot, and have been challenged before the Honourable High Court, but during the pendency of the applications, the complainant with help from the police has lodged a false FIR against the applicants; that there is an unexplained delay of about 12 days in lodging of FIR, meanwhile the distance between the place of incident and the Police Station is not more than 3 kilometers; that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. and requires for further inquiry.

4. On the other hand, the learned D.P.G. vehemently opposed the bail plea of the applicant.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant, learned D.P.G. and the complainant and have perused the relevant record.

6. Admittedly, no specific role has been assigned to any of the accused persons. The complainant has not disclosed the words uttered by the accused. On top of that, there is an unexplained delay of about 12 days in the lodging of FIR, while the Police Station was not too far away from the alleged place of incident. In a similar case titled *Muhammad Tanveer v. The State and another (PLD 2017 SC 733)*, where the offence did not fall within the prohibitory clause of section 497, Cr.P.C, the Hon'ble Apex Court observed as under:-

“6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C, invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petition in hundreds are piling up in this Court and the diary of the Court is congested with such like petition. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Court of the country where law points require interpretation.”

7. In view of the above, I am of the opinion that the applicants have made out their case for grant of bail. Therefore, for the above stated discussion and reasoning, interim pre-arrest already granted to the applicants was confirmed on same terms and conditions vide short order. These are the reasons for the short order dated 21.12.2018.

8. Whatever stated above is tentative in nature and will not prejudice the case of either party as well as influence the mind of trial court in deciding the case on merits.

J U D G E