

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Cr. Bail App. No. S – 74 of 2021**  
**C. P. No. S – 14 of 2021**

Date of hearing	Order with signature of Judge
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**For hearing of bail application**

1. For orders on office objections at Flag-A
2. For hearing of bail application

**22-02-2021**

Mr. Shamsuddin N. Kobhar, Advocate for Applicants / Accused in Cr. Bail App. No. S-74/2021.  
Mr. Ubedullah Malano, Advocate for Petitioner in C. P. No. S-14/2021 and for Legal Heir of Deceased in Cr. Bail App. No. S-74/2021.  
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

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Applicants / Accused seek pre-arrest bail in Crime No.366/2020 registered against them and others at Police Station ‘A’ Section, Ghotki, for offences under Sections 302, 324, 114, 34, PPC. Previously, Applicants / accused applied for pre-arrest bail before learned 1<sup>st</sup> Additional Sessions Judge / MCTC, Ghotki, but the same was declined vide order dated 12-01-2021. Now, they have, therefore, approached this Court with the same prayer.

Learned counsel for the Applicants / Accused contended that the Applicants / Accused have been falsely implicated in this case with ulterior motives. In fact, no overt act is attributed to them in the case. Besides this, there is delay of five (05) days in lodging of FIR, for which no plausible explanation has been furnished.

Learned counsel for the legal heir of deceased as well as learned DPG have not been able to controvert the contentions of learned counsel for the Applicants / Accused.

I have heard the arguments of learned counsel and perused the material available on record with their assistance.

Admittedly, there is a delay of five (05) days delay in lodging of FIR, for which no explanation has been furnished. The allegation against Applicant / Accused Asad Ali Shah is only instigation to other accused to commit the murder of Anwar Ali Shah, father of the deceased, while the allegation against Applicant / Accused Murad Ali Shah is mere presence at the time of alleged offence and no overt act has been attributed to them except aerial firing. As such, their vicarious liability would be determined at the time of trial after recording of evidence. In this regard, I am fortified by the cases of Hon'ble Supreme Court reported as Dil Murad v. The State (2010 SCMR 1178) and Qurban Ali v. The State (2017 SCMR 279) in which on similar facts and circumstances, bail was granted to accused.

In the view of above, I am inclined by the arguments of learned counsel for the Applicants / Accused. Resultantly, interim pre-arrest bail already granted to the Applicants / Accused is hereby **confirmed** on the same terms and conditions, and the Bail Application stands **disposed of**.

So far the connected Petition is concerned, progress report was called from I.O. of the Case / Crime No.366/2020 of Police Station 'A' Section, Ghotki. Today, I.O / SIP Ali Nawaz Dayo is present and states that he recorded the statements of witnesses, and on the basis of such statements, he has kept the names of accused persons, including present Applicants / Accused and others, in Column II of the Challan, and genuine accused persons are still absconders. Injured Syed Anwar Ali Shah and other prosecution witnesses have implicated all the accused persons whose names have been placed in Column II of the Challan by the I.O of the case. Therefore, I am not satisfied with the investigation of SIP Ali Nawaz Dayo.

SSP Ghotki @ Mirpur Mathelo is directed to assign investigation of the subject case to some other police official not below the rank of DSP, who shall conduct the investigation without any fear and favour, and submit such report before this Court on the next date of hearing. SSP Ghotki @ Mirpur Mathelo is further directed to ensure the arrest of the accused who had fired upon the deceased and his injured father Syed Anwar Ali Shah without fail, and produce them before the Court having jurisdiction.

Adjourned to **8<sup>th</sup> March 2021**. Office is directed to communicate this order to SSP Ghotki @ Mirpur Mathelo **by fax**, as well provide its copy to learned Additional / Deputy Prosecutor General for compliance. Office is further directed to place a signed copy of this order in the captioned connected Petition.

Abdul Basit

J U D G E