

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Cr. Bail. Appln. No.S – 259 of 2021**

Date	Order with Signature of Hon'ble Judge
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**For hearing of bail application**

**(Notice issued)**

**31.05.2021**

Mr. Saddam Hussain Leghari Advocate along with Applicant  
Mr. Shafi Muhammad Mahar, DPG for the State

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**Aftab Ahmed Gorar, J:-** Through instant Criminal Bail Application, the applicant/accused Irshad Ali S/o Manghan Gopang, seeks pre-arrest bail in case / crime arising out of FIR No.06 of 2021 registered at Police Station Bozdar Wada, District Khairpur, for offences punishable under Sections 302, 114, 337-H(2), 148, 149 & 34 PPC.

2. The crux of the prosecution case as narrated in the FIR lodged by complainant Ameer Hussain Gopang on 08.03.2021 at 1400 hours at Police Station Bozdar Wada are that Mumtaz Ali aged about 38 years was his younger brother and there was murderous enmity going on between him and Irshad Gopang. On the day of incident *i.e.* 07.03.2021 he along with his nephew Ali Hyder, Marot Mir Hazar along with deceased were available in their Otaq, when it was about 5:15 pm, all of a sudden there came accused each one namely ***Irshad Ali with Kalashnikov***, Zulfiqar Ali, Ranjhan, Fayaz alias Khawaiz, with Pistols, Mst. Gul Bano empty handed, Raza Muhammad with Pistol, Ayoub with Gun, Zaheer with Kalashnikov, Imdad with lathi, Chakar with Pistol, Yar Muhammad with Kalashnikov, Alam alias Aloo with

Pistol and one unidentified accused, he will be identified if seen again. Out of them, accused Gul Bano instigated her accomplices not to spare Mumtaz Ali and kill him, as such at her instigation, accused Irshad Ali made direct fires from his Kalashnikov with intention of murder upon Mumtaz Ali, which hit on his chest beneath left nipple; accused Ranjhan made direct fire from his pistol which hit Mumtaz Ali on his left elbow; accused Zulfiqar made pistol fire which hit him below the right eye; who fell-down and was bleeding. On the firearm reports and cries, the co-villagers arrived there and after departure of the accused, he along with witnesses went over and saw that Mumtaz Ali had fire-arm injuries, bleeding and died, hence such FIR was lodged as stated above.

3. It is contended by learned counsel that the applicant/accused is innocent and has falsely been implicated by the complainant in the instant case due to old dispute; that there is delay of one day in lodgment of the FIR for which no plausible explanation has been furnished; that the role attributed to the present applicant/accused is general in nature, therefore, it could be ascertained after recording evidence that either the firearm injury assigned to the applicant/accused was fatal to the life of the deceased or not; that there is *malafide* on the part of the complainant to implicate the applicant/accused in the present case falsely; that the deceased was a criminal person and was involved in number of crimes, therefore, the complainant just to compare his old enmity has roped the present applicant/accused in the instant case. In support of his contentions, he has relied upon the case of ***Fakir Babar Khan v. The State (2007 P Cr.L J***

**352 [Karachi].** He lastly prayed that under the above stated circumstances, the interim pre-arrest bail earlier granted to the applicant/accused vide dated 27.04.2021 may be confirmed on same terms and conditions.

4. Learned Deputy PG for the State opposed to grant of pre-arrest bail to the applicant/accused by contending that the complainant in his FIR has specifically named the present applicant/accused that he made direct fire from his Kalashnikov which hit on the chest of the deceased Mumtaz Ali, therefore, he has actively participated in the commission of the offence, the offence entails capital punishment and falls within the prohibitory clause of Section 497(2) Cr.P.C, hence does not deserve for the extraordinary concession of pre-arrest bail.

5. I have heard the learned counsel for the applicant/accused, learned Deputy PG for the State and also gone through the record. The name of the applicant/accused is specifically mentioned in the FIR with active role that he being armed with Kalashnikov fired upon the deceased Mumtaz Ali which hit on his chest beneath the nipple, which is vital part of the body. The version of the complainant as setout in the FIR is supported by the medical evidence as well as by the P.Ws in their 161 Cr.P.C statements recorded during investigation. There appear reasonable grounds to believe that the applicant/accused Irshad Ali Gopang is guilty of the offence with which he is charged. The offence entails capital punishment and falls within the prohibitory clause of Section 497(2) Cr.P.C. In view of above, while considering the facts and circumstances of the case, it could be concluded safely that no case for grant of pre-arrest bail to the applicant is made-out.

Consequently, the instant Criminal Bail Application is ***dismissed***, the interim pre-arrest bail already granted to the applicant/accused namely Irsahd Ali Gopang vide order dated 27.04.2021 is hereby recalled and surety is discharged. The applicant/accused Irshad Ali S/o Manghan Gopang, who is present on interim pre-arrest bail is taken into custody and remanded to Central Prison-I Sukkur with direction that he shall be produced before the trial Court on each and every date of hearing in the aforesaid crime. Copy of this order be sent to learned trial Court for information. There is no cavil to the proposition laid down in the case law relied upon by learned counsels for the applicant/accused but the facts and circumstances of the case in hand are entirely distinguishable to the facts and circumstances of the cited case law. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

Judge

ARBROHI