

**ORDER SHEET**

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

Cr. Bail Application No.S-411 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objections.
2. For hearing of main case.

15.08.2022.

Mr. Badal Gahoti, Advocate for applicant.  
Mr. Mian Taj Muhammad Keerio, Advocate for complainant.  
Mr. Shawak Rathore, Deputy Prosecutor General.

O R D E R

**MUHAMMAD IQBAL KALHORO, J-** Applicant is called absent. His Counsel is seeking condonation of his absence on the ground that he is hospitalized. Order accordingly.

2. On 04.05.2022 at 11:30 a.m., applicant alongwith 10 co-accused, duly nominated in the FIR, over previous enmity accosted complainant party in village Phul Khohi, Taluka Kaloi, Diplo, District Tharparkar. Then on the instigation of applicant, the co-accused launched an assault on them killing two sons of the complainant namely Khalique Dino and Raziq and injuring his two other sons namely Attaullah and Ali Nawaz. During investigation, all the accused except applicant and accused Mumtaz, absconder, were taken into custody and challan against them has been submitted.

3. Applicant's case for pre-arrest bail stated by his Counsel is that he is innocent; falsely implicated; was not available at the spot as confirmed by the Investigating Officer from Call Data Report (CDR) showing his location in Badin at the time of incident. The eye witnesses including injured have not supported version of the complainant regarding applicant's presence and role of instigation ascribed to him; and hence, coupled with CDR record, Investigating

Officer exonerated him in investigation, though not agreed by learned Magistrate, and that he currently is standing the trial and appearing before the Court regularly. Learned Defence Counsel has relied upon the cases of Chaudhry NADEEM SULTAN v. The STATE through P.G Punjab and another (2022 SCMR 663), SHER AFZAL v. The STATE and another (2022 SCMR 186) and an unreported case of RAWAL HAJANO v. The STATE vide judgment dated 16.10.2012 passed by the Hon'ble Supreme Court of Pakistan in Criminal Petition No.88-K of 2012.

4. On the other hand, learned Counsel for the complainant and Deputy Prosecutor General have opposed bail to applicant on the grounds that applicant is nominated in a heinous offence which carries capital punishment. The opinion of I.O is not binding upon the Court. The complainant who has lost his two sons cannot be deemed to substitute the real culprit with the fake one. To support their arguments, they have relied upon the cases of MUHAMMAD ARSHAD v. The STATE (2006 SCMR 966), MUHAMMAD JAHANGIR KHAN and others v. The STATE and others (2020 SCMR 1270) and QAYYUM KHAN v. The STATE and others (2022 SCMR 273).

5. I have considered submissions of the parties and perused material available on record including the case law. There are 11 accused nominated in FIR who all have been assigned specific role of causing murder of two persons and injuring yet two others. However, the role ascribed to the applicant is that of instigation, which has not been supported by the eye witnesses including the injured. They instead have taken name of co-accused Tayyab for instigating the accused to assault the complainant party. Further, when allegedly 11 accused are present duly armed with the weapons and there is

running enmity between the parties, the question as to whether they acted under the influence of the one instigating them or on their own will require further inquiry.

6. Further, opinion of I.O regarding his innocence, although, not binding on the Court but in the context of eye witnesses contesting the claim of the complainant regarding presence of applicant and his part of instigating the others, assumes importance and cannot be brushed aside at least for the purpose of deciding the question of entitlement of the applicant to the relief of pre-arrest bail. Which is an arrangement interim in nature and subject to final outcome of the case to be decided by the trial Court after recording of evidence. I am, therefore, of the view that applicant has been able to make out a case for bail. Accordingly, this application is allowed and ad-interim pre-arrest bail already granted to the applicant is hereby confirmed on same terms and conditions.

7. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

**JUDGE**

Shahid