

**ORDER SHEET**

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

Cr. Bail Application No.S-280 of 2021

Cr. Bail Application No.S-394 of 2021

Cr. Bail Application No.S-633 of 2021

Cr. Bail Application No.S-656 of 2021

Cr. Bail Application No.S-706 of 2021

Cr. Bail Application No.S-835 of 2021

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE(S)**

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**01.11.2021**

Applicants Mujahid Ali, Danish @ Jani and Allah Ditto @ Dital are present on interim pre-arrest bail.

Mr. Mumtaz Sachal Awan, Advocate for applicants in Criminal Bail Applications No.S-280, 394, 633 & 706 of 2021.

Mr. Zulqarnain Talpur, Advocate for applicant in Criminal Bail Application No.S-656 of 2021.

Mr. Gulzar Ali A. Soomro, Advocate for applicant in Criminal Bail Application No.S-835 of 2021.

Mr. Imtiaz Ali Abbasi, Advocate for complainant.

Ms. Sobia Bhatti, Assistant P.G.

**ORDER**

MUHAMMAD IQBAL KALHORO, - In hand are six applications, three for pre-arrest bail and three for post-arrest bail in Crime No.36 of 2021 registered at P.S Hatri District Hyderabad, lodged by complainant Muhammad Ashraf on 17.03.2021 alleging that accused, 12 in number, due to difference on the point of demand of Bhatta from a builder came to the shop of his brother Ejaz in village Muhammad Gopang duly armed with deadly weapons i.e. pistols, iron rods, hatchets etc and caused injuries including firearm injuries to seven persons of the complainant party, out of whom, Mst. Bano and Aijaz died, whereas remaining persons received serious injuries.

2. Learned Defence Counsel have submitted that applicants are innocent and have been falsely implicated in this case at the instance of one Aftab builder who has used the complainant party against them; the accused and complainant party are related to each other; no specific roll has been

assigned to any of the applicants; there are variations in the oral account and the medical evidence, which shows that a wide net has been spread to rope in all the members of a family in the case. Applicant Danish @ Jani is employee in Qasimabad Government Hospital was on duty at the time of incident and has produced such certificate supported by two employees working over there; sharing of common intention by the accused requires further inquiry and they are entitled to bail. In support of arguments, they have relied upon the cases reported as 1980 SCMR 784, 1997 SCMR 251, 2020 SCMR 956, 2013 SCMR 538, 2013 SCMR 1415 and 2018 YLR 1800.

3. On the other hand, learned Assistant Prosecutor General assisted by learned Counsel for complainant has opposed grant of bail.

4. I have considered submissions of the parties and perused the material available on record including the case law cited at bar. In the incident, two persons lost their lives and five received serious injuries at the hands of the applicants. The incident took place near the shop of deceased Aijaz where applicants duly armed with deadly weapons came in a car and on foot which is prima facie a sufficient evidence of their common intention. Apparently, free use of weapons by the accused while committing the offence as evidenced from injuries and two casualties also speaks of their preparation in advance. The variations pointed out by learned Defence Counsel in medical certificate and ocular account are minor in nature and prima facie do not tend to adversely affect merits of the case. More so such variations at the bail stage cannot be appreciated as it requires deeper appreciation of evidence. Even otherwise, it is not humanly possible to capture all minor details of an incident with photogenic precision and to recall them at the time of registration of the case. The accused have been assigned specific role which is supported by the relevant memos prepared at the spot and the recovery effected from the arrested accused and the statements of the witnesses under Section 161 Cr.P.C. Their alleged role is further supported by medical evidence. While deciding the bail application either pre-arrest or post arrest only tentative assessment of the material available is required to be made. This is not a simple case of injury but two persons have lost their lives and five have been severely injured. The plea of alibi taken by applicant Danish is not borne out of investigation report and is therefore his defence at the maximum cannot be dilated upon at this stage.

5. No case for pre-arrest or post arrest bail in the circumstances has been made out. Accordingly, the applications are dismissed and ad-interim pre-arrest bail already granted to some of the accused is hereby recalled. However, before parting with this order, I would like to direct the trial Court to expedite the matter and record evidence of complainant and injured within a period of 04(four) months, after that arrested applicants would be entitled to file fresh application before the trial Court, which if filed shall be decided on merits.

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

JUDGE

Shahid