

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-806 of 2020

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

1. For orders on office objections.
2. For hearing of main case.

25.10.2021.

Mr. Shahnawaz Brohi, Advocate for applicant alongwith applicant.

Mr. Zahid Husain Hingoro, Advocate for complainant alongwith complainant.

Mr. Shahzado Saleem Nahiyoon, Additional P.G a/w SIP Imamuddin Rahpto SHO P.S Husri District Hyderabad.

ORDER

MUHAMMAD IQBAL KALHORU, - Complainant has reported incident of murder of his brother namely Dildar Ali at the hands of co-accused Fida Hussain armed with a pistol on 25.06.2020 in a street at Village Ahmed Khan Almani and states that present applicant armed with a hatchet was in his company and had stopped the Zuzuki in which his brother was travelling alongwith him, and witnesses.

2. Learned Counsel has argued that applicant is innocent and has been falsely implicated in this case; there is delay of two days in registration of F.I.R; 161 Cr.P.C statements of the witnesses were recorded a day later; in the investigation no material was found against the applicant and he was released under Section 497 Cr.P.C by the Investigating Officer and his name was placed in Column No.2. However, the learned Magistrate did not agree with his report and took cognizance against him; no incriminating article was recovered from him either and the case against him is one of further inquiry and therefore his false implication cannot be ruled out.

3. Learned Counsel for complainant and learned Additional P.G have opposed grant of bail. They state that the pistol used by the co-accused belongs to the applicant which sufficiently connects him with the offence. They have relied upon the cases reported as 2016 SCMR 1529, 2011 SCMR 1606, 2006 SCMR 966, 2004 SCMR 1019, 2014 MLD 1220.

4. I have considered submissions of the parties and perused material available on record including the case law cited at bar. No doubt, name of applicant is mentioned in F.I.R but no active role qua killing the deceased is attributed to him. In the investigation, he was let off by the police and his name was placed in Column No.2, which furnishes apparently an extra circumstance in his favour qua his entitlement to bail. Non-recovery of any incriminating material i.e. hatchet etc. during investigation from him also prima facie supports opinion of the I.O regarding his non-participation in the offence. The pistol allegedly used by co-accused in the offence is stated to belong to the applicant. But regarding which a separate F.I.R has been registered against him and he has been granted bail in that case. The pistol was not recovered from him but from co-accused who is his nephew residing in the same house. Therefore, that offence being separately dealt with would not bring the case against applicant at par with co-accused. An overall consideration of all these factors would make the case to be of further inquiry against the applicant and his false implication cannot be ruled out. Therefore, this application is allowed and ad-interim pre-arrest bail already granted to applicant by an order dated 21.08.2020 is hereby confirmed on same terms and conditions.

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

JUDGE

Shahid