

ORDER SHEET  
**THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Bail Application No.S-741 of 2022.

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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For orders on office objection.

For hearing of main case.

09.09.2022.

Mr. Altaf Sachal Awan advocate for the applicants.

Mr. Imran Ali Abbasi Assistant Prosecutor General, Sindh.

Mr. Ahsan Gul Dahri advocate for complainant.

Applicants are present on interim pre-arrest bail.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Parties engaged in a brawl over dispute of land in their village in Deh Nakar, Taluka Sakrand, on 28.04.2022. From accused side, one Muhammad Aslam lost his life and applicant No.4 Mian Bux got injuries. From complainant side, three persons namely Aftab received a fire arm injury, Abdul Khaliq likewise and Muhammad Yousif received a hatchet injury on head. Both the parties reported the matter to police which has been accordingly incorporated in book kept under Section 154 CrPC separately.

Learned defence counsel has pleaded for bail citing contradiction in medical and ocular evidence, delay in registration of FIR and the fact that applicants were attacked by complainant party and they committed murder of Muhammad Aslam brother of applicant Moula Bux who is complainant in that case. He has relied upon case law reported as *2022 SCMR 264 (Dildar Ahmed vs. The State & others)* and *2022 SCMR 1271 (Muhammad Ijaz vs. The State & others)*.

His arguments have been controverted by learned counsel for complainant stating that the injuries sustained by victims have been verified by Medico-Legal Officer; the delay occurred because the complainant party was arrested in the murder case registered against them and only when condition of injured got aggravated, they were produced for medical examination and their version was recorded. He has relied upon *2022 SCMR 273*, *2016 SCMR 2064*, *PLJ 2016 Cr.C. Karachi 262* and *2016 PCr.LJ Note 73*. Learned APG has supported his arguments.

I have considered arguments of the parties and perused the record including the case law. Enmity between the parties is admitted but it is a double edged weapon and cuts both ways. From side of complainant as many as six accused have been nominated in the murder of Muhammad Aslam who all have been arrested and are in jail. Here out of six applicants, four have been assigned specific role of causing injuries from fire arm and sharp side of weapon. These injuries have been verified by medical evidence and no malafide in this regard can therefore be alluded to the complainant in nominating the applicants. However, applicants Moula Bux and Akhtiar Ali have been shown only present on the site without actively participating in the incident which makes the case against them to be of further inquiry.

The point, as to which party is aggressor and which party is aggressed upon is basically a point of fact can only be appreciated after recording of evidence. Deciding an application for pre-arrest bail, not only malafide on the part of complainant, but merits also are to be kept in mind and weighed properly. Even otherwise mere cross cases registered by parties against each other does not ipso-facto make each party entitled to concession of pre-arrest bail. Extra ordinary relief of pre-arrest bail is not available to an accused who is prima facie found involved in the offence. The case of applicant Moula Bux and Akhtiar is however quite distinguishable to the proposition holding sway in the cases of pre-arrest bail, as they are not assigned any role.

Accordingly, this bail application to the extent of applicants Moula Bux and Akhtiar is allowed and ad-interim pre-arrest bail granted to them vide order 15.07.2022 is hereby confirmed on the same terms and conditions. Whereas the bail application to the extent of remaining four applicants i.e. Haji Khan, Arbab Khan, Mian Bux and Irshad Ali is dismissed and ad-interim pre-arrest bail granted to them vide abovementioned order is hereby recalled.

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

JUDGE