

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-772 of 2022

DATE ORDER WITH SIGNATURE OF JUDGE

10.10.2022

Mr. Ali Ahmed Palh advocate for applicant along with applicant on ad-interim pre-arrest bail.

Mr. Safdar Ali Abro advocate for complainant along with complainant.

Mr. Shahzado Saleem Nahiyoan, Additional PG.

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O R D E R

MUHAMMAD IQBAL KALHORO, J.- There is bloodbath between the parties over landed property. On 15.03.2022 at 1215 hours when complainant along with his son Aftab and nephew Farooque were busy in filling / putting soil on earth, behind their house situated in village Lakha Dino Sand Deh Dhaloo, applicant along with co-accused Younus armed with lathi and Ghulam Mujtaba having a hatchet came over there and started abusing complainant party. Then, applicant instigated the other accused to commit murder of the complainant party upon which Ghulam Mujtaba caused a sharp side hatchet blow on the head of Farooque and Younus caused him lathi blow. He was seriously injured and was taken to hospital where he remained indoor patient for 15 days and was ultimately discharged. Thereafter, applicant appeared at PS and registered FIR u/s, among others, 324 PPC. However, meanwhile, condition of the injured deteriorated, he was taken to a private hospital in Hyderabad and died there on 15.05.2022. Resultantly, section 302 PPC has been added in the case.

2. Learned counsel for applicant has argued that there is delay of 17 days in registration of FIR; deceased was alive for 1½ month but his statement was not recorded; applicant is son of co-accused Muhammad Younus who has been assigned a lathi blow to the deceased but he has been granted post arrest bail; since there is enmity between the parties, the complainant has tried to throw a wide net to implicate male members of entire family in the case.

3. On the other hand, learned Additional PG and counsel for complainant have opposed bail to the applicant.

4. It is not disputed that co-accused Muhammad Younus, who happens to be father of the applicant, and has been assigned role of causing a lathi blow to the deceased, has been granted post arrest bail and his bail has not been challenged by the prosecution. Applicant has been assigned role of instigating Muhammad Younus and Ghulam Mujtaba, who is in jail, to commit the offence. Out of these two, Muhammad Younus is his father and Ghulam Mujtaba is his brother. In the circumstances, it is yet to be seen whether father and brother acted upon his instigation or acted independently to commit the offence because enmity is with entire family not with applicant only. Main accused who has been assigned role is in jail and since bloodbath between the parties is admitted, malafide on the part of complainant to implicate applicant for instigation cannot be ruled out.

5. In the circumstances, this application is allowed and applicant's ad-interim pre-arrest bail granted to him vide order dated 26.07.2022 is hereby confirmed on the same terms and condition.

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

JUDGE