

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
 Present : Omar Sial, J.

Cr. Bail Application No. 1817 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

28th April, 2022

Mr. Muhammad Daud Narejo, Advocate for applicants.
 Mr. Umair Bachani, Advocate a/w complainant.
 Mr. Talib Ali Memon, A.P.G.

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1. (i) Ali Nawaz Mallah, (ii) Rizwan Magsi, (iii) Rajab Ali, (iv) Muhammad Qasim Mirbahar and (v) Atta Hussain Magsi have sought pre-arrest bail in crime number 17 of 2021 registered under sections 324, 427, 147, 148, 504, 382, 337-H(ii), 337-F(ii), 337-D and 149 P.P.C. at the Garho police station in Thatta. Earlier, their applications seeking bail were dismissed on 07.09.2021 by the learned 1st Additional Sessions Judge, Thatta.
2. It is pertinent to mention that before the dismissal of their bail applications on 07.09.2021, their bail applications had earlier been dismissed on 24.07.2021 by the learned 2nd Additional Sessions Judge, Thatta for non-prosecution.
3. The reason I am not stating the facts of the case is that I intend to dismiss these bail applications, not on merits, but in line with the principle enunciated by the Honorable Supreme Court of Pakistan in the case of **Azam Saleem and another vs The State and others reported at PLD 2021 SC 894**. In this case the Honorable Supreme Court reiterated the following:

 "In the end, we reiterate, for the sake of clarity, that if a pre-arrest petition is dismissed for the non-appearance of the petitioner under section 498-A Cr.P.C. the second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition. Only if the explanation is found satisfactory can the Court proceed further and decide the second petition on merits. However, if the explanation is found to be un-satisfactory, the second petition is not

maintainable and is liable to be dismissed without going into the merits of the case.”

4. In the present case neither does the memo of the bail application explain the absence of the applicants before the learned trial court nor did the learned counsel arguing the case for the applicants provide one during the hearing in this Court. I notice however that the applicants had taken the stance before the learned trial court, as is reflected in the impugned order that their absence was due to “work suspension on account of corona virus”. This reason does not appear to be satisfactory or convincing as work was not suspended even in the pandemic time for the hearing of bail applications. The learned trial court was not assisted properly and the aforementioned principle enunciated by the Honorable Supreme Court was not brought to its notice though the learned counsel for the complainant did argue that the reason for the applicants not to appear before the trial court was due to their nomination in another murder case. It appears that the learned trial court while showing its displeasure at the absence of the applicants in the earlier bail application was swayed, inter alia, by the lack of malafide, in dismissing the pre-arrest bail applications.
5. In view of the above, the bail application stands dismissed.

JUDGE