

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1818 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

22nd December, 2021

Mr. Rehman Dino Mahesar, Advocate a/w applicants.

Mr. Ghulam Raza, Advocate for complainant.

Mr. Ali Haider Saleem, A.P.G.

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Omar Sial, J: Rajab Ali and Atta Hussain have sought pre-arrest bail in crime number 24 of 2021 registered under sections 302, 114 and 201 P.P.C. at the Gharo police station in Thatta. Earlier, their application seeking bail was dismissed on 7-9-2021 by the learned 1st. Additional Sessions Judge, Thatta.

2. The aforementioned F.I.R. was registered on 22-7-2021 on the complaint of Rashid Ali Bughio. He recorded that his brother Muharam Ali had gone to work as a security guard at a fish farm owned by applicant Rajab Ali. On 20-7-2021 the complainant was informed that Muharram had died and that the dead body was taken to the Edhi Centre by the applicant and one another by the name of Hassan Magsi. The complainant was also told by some body that in the evening of the 20th, the two applicants along with Irfan Ali Magsi and Muhammad Sharif were at the fish farm when some people had attacked the fish farm and as Muharram Ali was a guard they had shot and injured him and that later he had succumbed to his injuries. The complainant went to the Edhi Center and saw that the dead body of his brother was being put in an ambulance and that in a vehicle nearby sat Hasan Ali Magsi, Rajab Ali Magsi, Muhammad Sharif Magsi and Irfan Ali Magsi. The Magsi clan blamed one Sufyan Shaikh as having killed Muharram because Sufyan and the Magsis had an ongoing enmity. The complainant however nominated applicant Rajab Ali as having instigated the applicant Atta Hussain, Muhammad Sharif Magsi and Irfan Ali Magsi to shoot Muharram.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned Assistant Prosecutor General.

4. The investigating officer of the case conceded that no involvement of the applicants had been found in the incident. He admitted that apart from what was stated in the F.I.R. by the complainant (which information was provided to the complainant by an unknown source) no evidence of any sort was available to link the applicants with the offence. The learned counsel for the complainant and the learned Assistant Prosecutor General both conceded to what was stated by the investigating officer. Upon further query as to why the applicants had been arrested if there was no evidence against them, the investigating officer informed the court that the incident occurred on 22-7-2021 but that it was not till 11.8.2021 that a person called Ghulam Mustafa had come with the complainant and had recorded a statement that he had seen the incident and the applicants committing it. No explanation is on record to show as to who was Ghulam Mustafa and why did he emerge after 19 days to support the prosecution case. Prima facie it appears that Ghulam Mustafa was brought in as a witness to provide the only evidence which may be available to the prosecution. The authenticity of Ghulam Mustafa's statement will have to be determined at trial. The complainant is said to be a supporter of one Sufyan Shaikh with whom the Magsis have an ongoing enmity which has also seen initiation of criminal litigation between the parties. In the background of the enmity and the some what strange information provided in the F.I.R., malafide on the part of the complainant at this stage cannot be conclusively ruled out.

5. For the reasons given above, I am of the view that the nexus of the applicants with the offence for which they are charged requires further inquiry and the truth of the matter can only be determined after evidence is led at trial. The interim pre-arrest bails granted to the applicants are therefore confirmed however the surety amount shall be Rs. 500,000 each and P.R. Bonds in the like amount. The additional surety may be deposited with the Nazir of this court to his satisfaction.

JUDGE