

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2369 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

09-02-2023

Mr. Moqees Alam, Advocates a/w applicant.

Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: Kaleem has sought pre-arrest bail in crime number 394 of 2022 registered under sections 302 and 34 P.P.C. at the Manghopir police station. Earlier, his application seeking bail was dismissed by the learned 1st Additional Sessions Judge, Karachi West on 19.11.2022.

2. The aforementioned F.I.R. was registered on 06.05.2022 on the complaint of one Mohammad Shahid. Shahid reported that on 04.05.2022 he received information that his younger brother Mohammad Khalid who had gone for a picnic with his friends had drowned. One of the friends who had also gone to the picnic later told the complainant that another friend by the name of Shahid had hit Khalid with a stone and that Khalid had fallen in the water due to which he drowned.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned APG. My observations and findings are as follows.

4. It is an admitted position that Khalid went for a picnic along with his friends Shakir, Faheem, Teera alias Tanvir, Naveed, Kaleem, Iftikhar and Abid Ali when the unfortunate incident occurred. Abid Ali is the person who ostensibly told the complainant that Khalid had drowned because of being hit by a stone thrown at him by Shahid. Learned counsel has argued that no role was assigned to the applicant Kaleem; that it is not an offence to go to a picnic; that the deceased had actually drowned on his own and none of the other boys had anything to do with his drowning; that Abid Ali, who is

also an accused, in order to save his skin has falsely implicated Shahid and even then has assigned no role to the others. Lastly he argued that the learned 1st Additional Sessions Judge, Karachi West confirmed the bail of co-accused Naveed but on exactly the same grounds dismissed the bail application of the applicant. The learned APG was also of the view that the role of Naveed and the applicant (i.e. of presence) is identical and perhaps the applicant too should have been given the concession of bail on grounds of consistency. I have gone through the impugned order and am not inclined to agree with the learned trial judge in the distinction the learned court has drawn between the cases of the 2 accused. It also seems from the impugned order that the learned trial court while dismissing the bail was swayed by the fact that the applicant did not do anything to save the life of the deceased. This observation of the learned trial court may be a bit premature at this stage as it has not been pointed out to me whether a similar omission in the circumstances of the present case would tantamount to a criminal offence. The complainant accusing all the friends of his deceased brother for the murder does cast doubt on the complainant's bonafide.

5. In view of the above, the interim pre-arrest bail granted to the applicant earlier stands confirmed on the same terms and conditions.

JUDGE