

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-561 & 592 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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23.06.2023

Mr. Ghulam Asghar Mirbahar advocate for applicants along with applicants on ad-interim pre-arrest bail.

Mr. Ayaz Ali Gopang advocate for complainant along with complainant, has filed power, which is taken on record

Ms. Safa Hisbani, Assistant Prosecutor General.

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MUHAMMAD IQBAL KALHORO, J.- On 14.05.2023 at about 12:00 midday when complainant along with his three sons was present at his agricultural land, applicants along with co-accused, with whom he has alleged enmity over dispute on agricultural land, came there duly armed with different weapons and at the instigation of applicant Sultan, co-accused Muhammad Murad and Abdul Ghaffar armed with guns made straight fires upon them murdering one son of complainant namely Abdul Mutalib. Meanwhile, applicant Haroon, armed with a lathi, caused blows to PW Ghulam Shabbir on his head and different parts of body. After the incident, the accused went to their respective homes and complainant brought the injured and dead to PMC Hospital Nawabshah for fulfilling necessary formalities. In due course of time, on next day viz. 15.05.2023 FIR was registered.

2. Learned defense counsel has argued that applicants are innocent and have been falsely implicated in this case; no active role has been assigned to them; there is difference in medical evidence and the ocular account furnished by the witnesses; applicant Sultan was empty handed and has been assigned role of instigation which requires further inquiry; applicant Haroon is not assigned any role of causing injuries to the deceased and is said to have caused injuries to PW Ghulam Shabbir but there is difference in memo of injuries and medical certificate; applicant Sultan is

father-in-law of deceased and there is no issue of applicant with the complainant party; the enmity if any is between complainant and accused Muhammad Murad who himself was injured in the incident as it was the complainant party who had committed trespass on his house and assaulted him. He to support his arguments has relied upon 2021 SCMR 130, 2018 YLR 1282, 2020 YLR Note 40, PLD 2021 Supreme Court 708, 2018 YLR Note 218, 2020 YLR 736, 2017 YLR Note 161, 2006 PCrLJ 446 and 2001 MLD1554.

3. On the other hand, learned counsel for complainant and Assistant PG have opposed grant of bail to the applicants stating their presence at the spot and absence of any malafide on the part of complainant to falsely implicate them in a case of murder of his son and the fact that relief of pre-arrest bail is extraordinary in nature. They have relied upon 2014 MLD 1471, 2014 PCrLJ 630, 2011 SCMR 170, 2009 SCMR 725, 2002 SCMR 1886 and 2000 PCrLJ 974 to support their case.

4. I have considered arguments of parties and perused material available on record and taken guidelines from the case law cited at bar. The relief of pre-arrest bail which the applicants are seeking is extraordinary in nature. This relief is extended to a person who is accused in a non-bailable offence, by the complainant out of malafide and ulterior motives, to save him from humiliation of arrest. In this case, no such material is prima facie available to show that applicants in a case of heinous nature as this one have been implicated by the complainant falsely or out of ulterior motives. Presence of applicant Sultan at the spot and his instigating other accused to commit this offence is not only mentioned in FIR but is supported by statements of witnesses including injured u/s 161 CrPC. The fact that applicant Sultan is father-in-law of the deceased, chances of his false implication are prima facie nonexistent. Applicant Haroon has actively participated in the incident and has caused injuries to PW Ghulam Shabbir on his head and different parts of the body which injuries have been duly notified by the Medico Legal Officer in the Medico Legal Certificate. These all facts show that applicants are prima facie connected with the offence they have been charged with. In the

incident, one person has lost his life and although no direct role insofar as death of deceased is concerned has been attributed to them. But their active participation in the manner as above establishing their sharing common intention with the main accused prima facie is there. Therefore, I do not find applicants entitled to the concession of pre-arrest bail.

5. Accordingly, these applications are dismissed and applicants' ad-interim pre-arrest bail granted to them vide orders dated 01.06.2023 and 06.06.2023 respectively is hereby recalled.

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

JUDGE

Ali Haider