

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Bail Application No.S- 365 of 2023

Date of hearing	Order with signature of Judge.
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1. For orders on office objections
2. Hearing of Bail Application

28-08-2023

Mr. Ghulam Mustafa Jakhar, Advocate along with five applicants.
Mr. Allah Warrayo Soomro, Advocate for complainant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

ORDER

MUHAMMAD IQBAL KALHORO, J.- Parties are related inter se and are in dispute over KARO-KARI issue. On 27.12.2022, when complainant, his nephew Ali Jan, brother Qurban Ali, cousin Zakir Hussain and nephew Mohsin Ali were going to their village after attending a *Majlis*, they were waylaid allegedly by applicants and co-accused, eight in number, named in FIR, near a link road leading to Ahmedpur within the remit of P.S, Pir Jo Goth-Khairpur. The applicants and other accused were allegedly armed with KKs. They pointed out them to the complainant party and then co-accused Saeed and Irshad Ali fired from their KKs allegedly hitting Qurban Ali and Zakir Hussain. Qurban Ali died at the spot and Zakir Hussain received injuries. Remaining accused including applicants then made straight fires to the other members of the complainant party, but they ducked down and saved themselves. When people, attracted by fire shots, gathered, accused decamped, hence FIR.

2. Applicants' counsel submits that they are innocent; no active role has been attributed to them; medical certificate of injured Zakir Hussain has been challenged and he is not appearing before the Medical Board for re-examination and hence the same has been suspended; there is delay of one day in registration of FIR; documents

including memo of place of incident have been fabricated; co-villagers have recorded statements in favour of applicants, hence they are entitled to concession of pre-arrest bail. In support of his contentions, he has relied upon cases reported as **2023 SCMR 1386, 2014 SCMR 1355, 2020 PCr.LJ Note 89 and 2018 YLR Note 218.**

3. On the other hand, learned counsel for complainant and Deputy P.G for the State have opposed bail to applicants on the ground that they with specific role have been nominated as accused in FIR. To support their contentions, they have relied upon cases of *Sidra Abbas v. The State and others* (**2020 SCMR 2089**), *Abu Bakar Siddiqui v. The State and others* (**2021 SCMR 5**) and *Ahsan-ul-Haq v. The State and others* (**2014 MLD 1220**).

4. I have considered submissions of the parties and perused material available on record and taken guidance from the case law cited at bar. In FIR, applicants are shown armed with KKs and in company of the main accused, namely, Saeed and Irshad Ali, yet absconders, who by firing from their respective KKs murdered one person and injured one PW-Zakir Hussain. The gist of allegations against applicants and others, *prima facie*, appears to be supported by memo of place of incident which shows recovery of 20 empties of KKs from there. The ground in defence that there was only one fire made by absconder accused does not seem to be sustainable in such circumstances. The alleged offence falls within the prohibitory clause of Section 497(1) Cr.P.C and, *prima facie*, applicants are attributed active role of waylaying the complainant party and facilitating the main accused in committing murder of one innocent person and injuring the other. The statements of co-villagers, allegedly in favour of applicants have not been believed by the I.O as, *prima facie*, he has not recorded any observation thereupon in the Challan. Hence, effect of such statements, if any, is to be determined in the trial and not at this stage. No case for relief of pre-arrest bail, in such circumstances, is made out to applicants. The case law relied upon by learned counsel for the applicants are distinguishable and not applicable in this case.

Accordingly, this bail application is **dismissed** and the ad-interim pre-arrest bail earlier granted to applicants by this Court is recalled.

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

JUDGE

Ahmad