

ORDER-SHEET  
**IN THE HIGH COURT OF SINDH CIRCUIT  
COURT HYDERABAD**

Criminal Bail Application No.S-742 of 2023

**21.08.2023**

Mr. Nizamuddin Veeghio, advocate, for applicants.

Applicants are present on interim pre-arrest bail.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Complainant Mst. Shamal Khatoon is present and states that she will not engage a counsel as she has full faith upon learned A.P.G. Sindh, who will proceed this matter on her behalf.

**ORDER**

**ZULFIQAR ALI SANGI, J:-** This order will dispose of instant bail application filed on behalf of the applicants namely, Asadullah s/o Muhammad Pinyal Khan and Khair Muhammad s/o Ali Asghar, seeking their pre-arrest bail, who are facing trial in Crime No.106/2022 of PS Pinyari, Hyderabad, registered under sections 302, 109, 34 PPC.

**2.** Background of the case is that on 23.12.2022 two unknown persons came on motorcycle having pistols at the corner of Phuleli canal near Government College Road, Pinyari, Hyderabad and made straight fire shots upon Ghulam Murtaza, the husband of complainant and committed his murder. They succeeded to flee away from the place of scene. However, subsequently in her further statement recorded on 24.12.2022, the complainant disclosed the names of Sartaj Chandio, Mansoor Ahmed Chandio, Asad alias Labek Chandio s/o Patel, Asad son of Ayaz Ali Chandio, Khair Muhammad alias Keral Chandio, Ali Gohar Chandio and Waseem Chandio.

**3.** Learned counsel for the applicants has contended that the applicants/accused are innocent and have falsely been implicated in this case by the complainant in her further statement

due to enmity with the allegations of abetment, which was recorded after one day of the incident. He further contended that in fact deceased Ghulam Murtaza, Razzaque and others enticed away Mst. Zeenat Khatoon and such FIR bearing No.61/2022 was lodged at PS Warah and then complainant party committed murder of said Mst. Zeenat and in this regard FIR was also lodged at PS Qasimabad Hyderabad by one Mst. Habiba Khatoon against the complainant party, as such, the applicants are involved in the present case to take revenge. He further contended that there is no iota of evidence against the applicants except the allegations levelled by the complainant in her further statement. The malafide on the part of Investigating Officer with collusion of complainant party is apparent. Learned counsel has further contended that allegedly the applicants have been booked with ingredients of section 109 PPC, which could only be determined at the trial whereas section 302 PPC is not applied against the applicants/accused; that the incident occurred at day time within the thickly populated area but no private person has been cited as a witness of the alleged offence; however, close relative of the complainant are witnesses of the incident. Learned counsel has further contended that this is a fit case for further inquiry as envisaged under subsection 2 of section 497 Cr.P.C. as such, he prayed for confirmation of interim pre-arrest bail already granted to the applicants/accused.

**4.** On the other hand, learned A.P.G. Sindh has opposed the confirmation of interim pre-arrest bail to the applicants/accused on the ground that there is no mala fide on the part of complainant and applicants are nominated in the further statement of complainant.

**5.** Heard arguments and I have scrutinized the entire material available on the record.

**6.** Admittedly the applicants/accused are not nominated in the FIR and they have only booked with the allegations of abetment in further statement recorded after the FIR. In the FIR, only two unknown accused have been shown to have made straight fire shots upon the deceased and the rest of accused have also

been booked in further statement of complainant. Implication in offence on basis of belatedly recorded further statement of the complainant *prima facie* creates doubt. Bare look of the crime report and the subsequent statement of the complainant showed that the complainant kept changing his stance. Admittedly no description or features have been mentioned in the FIR and even the complainant has not disclosed the source of acquiring knowledge in her further statement that the applicants are involved in the instant crime and it was essential for the complainant to disclose source of such information. The applicants have shown that allegedly the deceased and others have committed murder of one Mst. Zeenat and such FIR against the complainant party was lodged. The involvement of the applicant is yet to be determined at the trial as they are not specifically booked with the ingredients of section 302 PPC. From all these facts, the case in hand appears to be fit for further inquiry as envisaged under subsection 2 of section 497 Cr.P.C.

**7.** In view of the above, I am of the view that the applicants have succeeded to establish their case for confirmation of interim pre-arrest bail already granted to them. Consequently, interim pre-arrest granted to the applicants vide order dated 18.07.2023 is hereby confirmed on the same terms and conditions.

**8.** The observations made hereinabove are tentative in nature and will not prejudice the case of either party.

JUDGE