

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-324 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing.

30.07.2018.

Mr. Sajjad Ahmed Chandio, Advocate alongwith applicant/accused.
Mr. Omparkash H. Karmani, Advocate for complainant.
Ms. Rameshan Oad, Assistant P.G

ORDER

ZAFAR AHMED RAJPUT, J:-

Through the instant

Criminal Bail Application, applicant/accused Ashraf S/o Ramzan has sought pre-arrest bail in Crime No.12 of 2018, registered at P.S Tando Jan Muhammad District Mirpurkhas, under Sections 302, 324, 114, 504, 147, 148 and 149 PPC. His earlier bail application for grant of pre-arrest bail bearing No.95 of 2018 was heard and dismissed by the learned Sessions Judge, Mirpurkhas vide order dated 03.03.2018 but the applicant/accused was admitted to interim pre-arrest bail by this Court vide order dated 20.04.2018 and now he seeks confirmation of his interim pre-arrest bail.

2. As per FIR, the allegation against the present applicant/accused is that on his instigation, three accused namely Imran S/o Hanif, Irfan S/o Hanif and Jumman S/o Allahyar caused fire arm injuries to Gul Muhammad @ Gullan, the father of the complainant, and Zahid Ali, the brother of the complainant, which subsequently resulted in death of complainant's brother Zahid Ali.

3. Learned Counsel for the applicant/accused has mainly contended that the applicant is innocent and has falsely been implicated in this case; that earlier the police submitted interim report on 18.04.2018 before the Judicial Magistrate concerned alongwith the report of District Public Prosecutor, Mirpurkhas, wherein the present applicant/accused was kept in Column No.1 with blue ink and latter the prosecution submitted challan on 03.04.2018 with a report of District Public Prosecutor, Mirpurkhas, wherein the name of the present applicant/accused was not mentioned in column No.2 on the basis of defence evidence/plea of alibi. Learned DPP while giving no weight directed the Investigating Officer concerned to submit the final challan by placing the name of the applicant/accused for the commission of the alleged offence; that as per final challan, the Investigating Officer has failed to collect any evidence against the present applicant/accused and hence his name was placed in column No.2 with blue ink. While relying upon the case of *MUHAMMAD ASHRAF ALIAS BHULLER V/S. THE STATE* reported as 2008 YLR 1462, the learned Counsel has further contended that the note of DPP Mirpurkhas, directing the Investigating Officer to submit the challan against the accused, fell out of the purview of the duties assigned to District Public Prosecutor and no legal sanctity is attached to his opinion qua the guilt of an accused, because it is always the Court which is to charge the accused under the relevant provisions of law keeping in view the evidence available on record regarding the crime alleged and not the District Public Prosecutor. Learned Counsel for the applicant has also contended that so far as the allegation of instigation against the present applicant/accused is concerned, it requires recording of evidence of the witnesses and the vicarious liability of the applicant on the basis of instigation, if any, can only be determined by the trial Court after recording evidence of the prosecution witnesses.

4. Conversely, the learned Counsel for the complainant has vehemently opposed the confirmation of bail to the applicant/accused by maintaining that the applicant is nominated in the FIR and specific role has been assigned to him. He has also maintained that on the instigation of the applicant, the other nominated accused caused firearm injuries to the brother and father of the complainant and resultantly the brother of the complainant namely Zahid Ali died, hence, the present applicant/accused is equally liable for the commission of the alleged offence. In support of his contention, he has relied upon the case of *MUHAMMAD ASHRAF V/S. THE STATE & ANOTHER* reported as *2017 P.Cr.L.J 721*.

5. Learned Assistant Prosecutor General, while adopting the arguments of the learned Counsel for the complainant, has also opposed the confirmation of bail to the present applicant/accused. She maintains that not only on the instigation of the present applicant/accused, the brother of the complainant sustained fatal injuries but also his father received injuries on the vital part of his body. She has also maintained that the Investigating Officer had placed the name of the applicant/accused in column No.2 with blue ink on the basis of statement of the witnesses recorded from the defence side, however, all the other prosecution witnesses have fully supported the version of the complainant.

6. Heard learned Counsel for the applicant, learned Counsel for the complainant, learned A.P.G and perused the material available on record.

7. It appears that though the applicant/accused is nominated in the FIR by name but only the role assigned to him is of causing instigation to the other nominated accused. It further appears that in interim report submitted by the Investigating Officer on 18.04.2018 with a note of DPP Mirpurkhas,

the name of the present applicant/accused was placed in Column No.2 with blue ink on the basis of evidence collected by the Investigating Officer and latter the challan was submitted by the I.O on 18.04.2018 mentioning clearly that no evidence could be collected against the present applicant/accused, however, as per the note of DPP dated 02.04.2018, the applicant/accused was challaned in the case. It also appears that the specific allegation with regard to causing death of brother of the complainant has been leveled against the co-accused, hence, the vicarious liability, if any, shall be determined after full-fledge trial by the trial Court. At this stage of the case, at least the applicant/accused has been able to establish its case for the grant of bail on the ground of further inquiry, which falls within the ambit of Sub-Section 2 of Section 497 Cr.P.C, therefore, the interim bail already granted to the applicant/accused, vide order dated 20.04.2018, is hereby confirmed on the same terms and conditions.

8. Needless to mention that the observations made in this bail order are of tentative nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of in the above terms.

JUDGE