

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail. Appl. No.1864 of 2024

Date	Order with signature of the Judge
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13.12.2024

Mr. Raj Ali Wahid, , Advocate for applicants.

Ghulam Fareed, advocate for complainant.

Ms. Rubina Qadir, DPG. a/w I.O. DSP Syed Ghaffar Shah.

ORDER

MUHAMMAD IQBAL KALHORO J: Applicants Rizwan Baloch, Naisr and Hamza are seeking pre arrest bail in Crime No.487/2024 U/s 302,324, 34 PPC of P.S. Aziz Bhatti, Karachi. They are present on ad-interim pre arrest bail granted to them vide order dated 19.08.2024 and today matter is fixed for confirmation or otherwise.

2. As per brief facts, this incident took place on 17.07.2024 at 1330 hours, FIR was registered on next day on 18.07.2024 at 1945 hours. It is alleged by the complainant, a brother of deceased, that he and his friends Waseem and Ashique were present in the street, when five persons on three motorcycles arrived there who include the applicants. No sooner they came than they started firing at his brother but he in order to save himself went inside a shop of hairdresser, the accused followed him and fired upon him. As a result, he sustained serious firearm injuries and died in the hospital. A son of hairdresser who was present in the shop also got injured from their firing.

3. Learned counsel for applicants has pressed three grounds for bail viz. previous enmity, plea of alibi and that he was not heard by learned trial court while deciding the bail application. Explaining previous enmity, he has referred to some FIR already registered against applicants in which P.W. Waseem is complainant and the witnesses in this case are the witnesses there. Regarding plea of alibi, he has submitted a certain record of CDR, which according to him shows that all three applicants were not present at the place of incident. Besides, he has produced some snaps of CCTV camera which according to him point out to a different location of the applicants than the one articulated by the prosecution in the case. He has also pointed out to CDR record of complainant party which as per his view shows that neither complainant nor the witnesses were present at the spot at the relevant time. In addition, he has read out the impugned order, which shows that parties were heard but advocate was not

specifically heard. He has relied upon 2022 YLR Note 82, 2021 YLR 1429, 2017 MLD 1204, 2022 SCMR 663, 1997 P Cr. L J 4182021 SCMR 130, 2017 YLR Note 131 to support his arguments.

4. On the other hand, counsel for complainant and learned DPG have opposed bail stating that applicants are named in the FIR with specific role of causing firing at deceased; they were already known to the complainant on account of previous enmity, which is admitted by the counsel for applicants, hence have been named in FIR; as far as CDR and other record relied upon by the counsel in defence is concerned, it has not been verified and its genuineness is yet to be determined by the trial court. I.O. DSP Ghaffar Shah, who was entrusted with reinvestigation is present and has submitted his report. According to him, applicants have been found to be involved in the case and all the CDR reports and other record show their presence at the spot.

5. I have considered submissions of the parties, perused material available on record and taken guidance from the case law cited at bar. Applicants are nominated in the FIR with specific role of causing firing at the deceased as well as a son of hairdresser who was present at the spot inside the shop. As far as previous enmity is concerned, it cuts both the ways and unless entire evidence is recorded, it cannot be concluded by making a tentative assessment of the record that the applicants have been falsely implicated in the case on the basis of previous enmity. Insofar as plea of alibi is concerned, no doubt recent view of the superior courts has been that in certain cases plea of alibi at the time of bail can be considered but while deciding an application for pre arrest bail, the court has to remain extra conscious. For, this relief is extra ordinary in nature. The documents relied upon in defence have yet to stand scrutiny by the court to determine its genuineness. The second I.O. who after a thorough investigation, has found applicants to be present at the spot and involved in the case. In view of two investigations pointing out to presence of the applicants at the spot, the record relied in defence cannot be given much weight at this stage particularly when independent witnesses, who were present at the spot through 161 Cr.P.C statements have verified presence of the applicants and their specific role.

6. The impugned order is well reasoned, and indicates that the applicants were trying to delay hearing on their bail application on one excuse or the other. But then finally the trial court found an opportunity and heard the parties and decided the case. The relief of pre arrest bail is extra ordinary in nature and can only be extended when there is sufficient material moulding opinion of the trial court that the applicants are incriminated or involved in the case on the basis of

false and fabricated evidence. In this case, prima facie accusation is not only supported by contents of FIR but by two investigations plus relevant record including CDR and 161 Cr.P.C statements of the witnesses as well as medical evidence. I, therefore, do not find the applicants entitled for extra ordinary concession of pre arrest bail. Consequently, this bail application is dismissed and ad-interim pre arrest bail granted to the applicants is hereby recalled.

The observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

The bail application is disposed of.

J U D G E

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