

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1ST CrI. Bail Appln. No.S-259 of 2014

DATE OF
HEARING
19.10.2015.

ORDER WITH SIGNATURE OF HON'BLE JUDGE

For hearing.

Mr. Safdar Ali G. Bhutto, advocate for applicant/accused.

Mr. Khadim Hussain Khooharo, D.P.G.

Mr. Muhammad Saleem Jessar, advocate for complainant.

Applicants Muhammad Qasim, Muhammad Paryal and Fazal Muhammad, seek pre-arrest bail in crime No.59/2014 registered at Police Station Bakrani, District Larkana, under Sections 302, 114, 148, 149, 34, PPC.

2. According to the case of prosecution, on 09.5.2014, at 07.30 p.m. accused Imdad Ali, empty-handed, 2. Faiz Muhammad, 3. Ghulam Mustafa, 4. Aftab, 5. Muhammad Qasim, 6. Muhammad Paryal, armed with pistols, reached at the "Kiryana" shop of complainant Mazhar Ali alias Zahid Shaikh; on the instigation of accused Imdad Ali, all other accused committed murder of complainant's minor son Mehrban Ali (aged about 09 years) by causing fires upon him. The motive behind the offence as set out in the FIR is that the accused persons were pressing the complainant to sell out his house to them, which he had refused.

3. Learned Counsel for the applicants, *inter alia*, contends that the applicants have been implicated due to enmity; there is delay of one day in lodging the FIR; the complainant did not disclose the name of any accused at the time of reporting the matter to police while recording the entry in roznamcha; during investigation co-accused Imdad was found innocent; one eyewitness and mashir have filed affidavits whereby they have exonerated applicants, therefore, the case



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against the applicants calls for further enquiry and there is malafide on the part of complainant.

4. Learned D.P.G assisted by Mr. Muhammad Saleem Jessar, learned Counsel for complainant, vehemently opposed the bail application and contended that specific role of firing at deceased Mehrban Ali, a minor boy of only 09 years, is attributed to the applicants, which is fully corroborated by the medical evidence; affidavits filed by witnesses at this stage cannot be considered, hence the applicants are not entitled for concession of pre-arrest bail; and relied upon the case of *Naseer Ahmed v. The State* (PLD 1997 SC 347).

5. It is matter of record that specific role of firing at deceased Mehrban Ali, a minor boy of 09 years, is attributed to the applicants. Delay of one day in lodging the FIR *per se* is no ground for grant of concession of bail, moreover same has been explained by the complainant that after funeral proceedings of his son he went to police station, which explanation is sufficient and reasonable. The version of complainant and P.Ws insofar as the firing upon deceased by the applicants/accused is also fully supported by the medical evidence. It is settled principle of law that affidavit at bail stage filed by legal heirs or victim to the extent of compromise can be considered, whereas in case, the witness resiles from his earlier statement to save the accused cannot be considered, as held in the case of *Naseer Ahmed v. The State* (PLD 1997 SC 347). In the given circumstances, applicants are not entitled for grant of extraordinary concession of pre-arrest bail. Accordingly, the bail application is dismissed and the interim pre-arrest bail granted to the applicants on 17.6.2014 is hereby recalled.


JUDGE 19/12/2015