

ORDER SHEET  
**THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Bail Application No.S-731 of 2022.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on office objection.

For hearing of main case.

26.09.2022.

Mir Pervez Akhtar advocate for the applicant.

Mr. Shahzad Saleem Nahiyoan, Additional Prosecutor General.

Mian Taj Muhammad Keerio advocate for complainant.

Applicants are present on ad-interim pre-arrest bail.

ORDER

MUHAMMAD IQBAL KALHORO, J:- There appears to be bad-blood between the parties on construction of a house over Muhaga/frontal land of complainant's house situated in Village Asarario, Taluka Dahli, District Tharparkar. On 16.05.2022 when the complainant party tried to intervene in construction of the house, the applicants duly armed with lathis and hatchets assaulted them injuring critically four persons namely Muhammad, Ahmed, Wassayo and Sohrab. The Injured were taken to local hospital first and then to a hospital at Hyderabad. Thereafter complainant returned to register FIR against applicants and other co-accused who are reportedly in custody. Subsequently, injured Muhammad died out of injuries and therefore now case has been converted into a murder case challaned, among others, u/s 302 PPC.

Learned counsel for applicants in order to seek pre-arrest bail for applicants has argued that the applicants are innocent and have falsely been implicated in this case; there are no reasonable grounds to believe that they have committed this offence, the complainant has tried to throw a wide net to rake in as many persons of the same family as possible; there is delay of two days in registration of FIR which has not been explained; there are general allegations against the applicants and that vicarious liability, if any, would be determined at the stage of trial. 161 CrPC statements of witnesses were recorded after a delay of more than

ten days and some of the applicants were not even present at the spot, which is confirmed from Call Dta Record (CDR) of their phones but malafidely investigating officer has not included the same record in the case. The accused have moved an application to DIGP for reinvestigation which is pending. He in support of his arguments, has relied upon 2022 SCMR 198, 2020 SCMR 677, 2017 SCMR 279 and 2007 SCMR 482.

On the other hand, learned counsel for complainant and learned APG both have opposed bail to the applicants stating that due to their specific role, prima facie confirmed from medial evidence, one person has lost his life and three others have been critically injured, as such they are not entitled to extra-ordinary concession of pre-arrest bail. He in support of his arguments has relied upon 2022 SCMR 640.

I have considered arguments of both the parties and perused material available on record including the case law cited at bar. The grounds taken by applicants, require deeper appreciation of evidence which exercise cannot be undertaken at the stage of deciding an application for bail, particularly an application u/s 498 CrPC in which apart from merits of the case, the element of malafide on the part of complainant has to be weighed. The record shows that applicants' involvement in the case is not a result of any malafide by the complainant. Because of alleged action of applicants, duly verified by medical evidence, one person who had received multiple injuries, lost his life and three other were critically injured. The plea of alibi based on CDR of phones of some of the applicants, which is not even part of prosecution case, cannot be appreciated at this stage in favor of the applicants. The report u/s 173 CrPC/Challan shows that after getting pre-arrest bail first from learned trial Court, the applicants did not even join investigation and remained absconders.

The case law relied upon by learned defence counsel mostly cover cases u/s 497 CrPC and are distinguishable. It is well settled that principles governing relief of post-arrest bail are quite different to the ones regulating grant of pre-arrest bail. No case in presence of prima facie evidence therefore for grant of extra-ordinary pre-arrest bail is made out in favor of applicants. Accordingly, the bail

application is dismissed and ad-interim pre-arrest bail granted to the applicants vide order 13.07.2022 is hereby recalled.

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

JUDGE

Irfan Ali