

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2981 of 2024

Applicants : 1. Khalid S/o Abdul Majeed
2. Dawood Askani S/o Abdul Ghaffar
Baloch through Mr. Mushtaq Ahmed
Joyia, Advocate

Complainant : Mst. Razia W/o Ahmed
through Mr. Allah Nawaz Dal, Advocate

Respondent : The State
Through Mr. Muhammad Anwar Mahar,
DDPP

Date of hearing : 17.02.2025

Date of order : 17.02.2025

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.407/2024 for the offence under Sections 302/34 PPC registered at PS Mochko, after their bail plea has been declined by the learned Additional Sessions Judge-XII, Karachi West vide order dated 21.12.2024.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Applicants are called absent; however, learned counsel for the applicants requests for condonation of their absence. At his request, their absence is condoned. Per learned counsel for the applicants, applicants are innocent and have falsely been implicated in this case; that the role assigned against the applicants is that they merely caught hold of the deceased, otherwise there is no role; that Mst. Rabia also sworn in affidavit and exonerated the applicants stating that they were not present at the place of incident; that the applicants are attending the Court and they have not misused the concession of bail. Lastly, he prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant as well as learned DDPP vehemently opposed for bail.

5. Heard and perused.

6. Admittedly, the name of the applicants transpires in the FIR with specific role that on the direction of absconding accused Asghar they caught hold Rafique and thereafter, Asghar made fire upon him; as such, he fell down and on the way to hospital, he was expired. The ocular evidence finds support from the medical evidence. Sufficient material is available on record to connect the present applicants with the commission of offence. So far as the plea raised by learned counsel for the applicants that Mst. Rabia exonerated both the accused, on last date of hearing, learned counsel for the applicants was directed to produce her for confirmation of her affidavit; however, she is called absent today. Since Mst. Rabia is a wife of absconding accused Asghar, who made straight fire upon the deceased so also her affidavit is yet to be confirmed whether she has exonerated the present accused. At bail stage, only tentative assessment is to be made.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of **'Rana Abdul Khaliq v. The STATE and others'** [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, learned counsel for the applicants has failed to make out a case for grant of bail in view of subsection 2 of Section 497 Cr.P.C. Resultantly, the instant bail application is **dismissed**. The interim pre-arrest bail granted to the applicants/accused vide order dated 23.12.2024 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Kamran/PA