

57

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

Crl. Bail Appln. No.S-207 of 2021.

Crl. Bail Appln. No.S-217 of 2021.

Date

Order with signature of Hon'ble Judge

Mr. Abdul Rehman A. Bhutto advocate holds brief on behalf of Mr. Saeed Ahmed B. Bijarani, advocate for the applicant in both matters.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of Hearing : 30.08.2021.

Date of decision : 30.08.2021.

ORDER

**Omar Sial, J.:** Ali Gul Malik (the applicant in Crl. Bail Application No.217 of 2021) and Usman Malik (the applicant in Crl. Bail Application No.207 of 2021) have both sought pre-arrest bail in crime number 17 of 2021 registered under sections 302, 114, 147 and 148, P.P.C. at the Tangwani police station. Earlier, their applications seeking bail were dismissed on 07-5-2021 by the learned Sessions Judge, Kashmore.

2. Haneefan Khatoon lodged the aforementioned F.I.R. on 22-3-2021 reporting an incident which had occurred on 8-3-2021. She recorded that on 8-3-2021 she was at home with her husband Shahzado, son Manzoor Ahmed and her husband's nephew Sikander Ali, when at about 8:00 a.m., 5 men barged into her house. All 5 were identified by her, which included the 2 applicants. Out of the 5 persons, only one held a *lathi* whereas the others were empty handed. Upon the instigation of applicant Usman, one of the accused named Gul Khan hit Shahzado with his lathi, Shahzado ostensibly died of the hit 2 weeks later.

3. I have heard the applicants as well as the learned Addl. PG. The complainant did not effect an appearance despite notice. My observations and findings are as follows.

4. Both the applicants were empty handed. Mere presence has been assigned to the applicant Ali Gul Malik whereas applicant Usman has been assigned the role of instigation. There appears to be no evidence,

which would *prima facie* demonstrate that the 2 applicants shared a common intention with the accused Gul Khan who is said to be the only person with a lathi and who has been assigned the role of hitting Shahzado with the lathi. Whether the 2 applicants shared a common intention with Gul Khan to murder Shahzado will have to be established after evidence is led at trial.

5. There is a 14 day delay in lodging the F.I.R., which delay has not been appropriately explained at this stage. According to the Inquest Report, there is a delay of 12 hours from the time Shahzado died on 21-3-2021 (at 3:55 a.m.) and the police even seeing the body for the first time (at 4:00 p.m. on 21-3-2021). The F.I.R. was not registered till the next day (i.e. 6:00 p.m. on 22-3-2021). These delays will have to be explained at trial as no explanation exists at this moment. The impact of the delay will have to be determined by the learned trial court after evidence is led; however at this stage, coupled with the absence of any meaningful role played by the applicants in the alleged incident makes their case one of further inquiry.

6. The postmortem report issued in this case, upon a tentative assessment also does not reconcile with the version advanced by the complainant. In particular it reflects that Shahzado's body was brought for postmortem on 21-3-2021 and that according to the doctor, the time between injuries and death was 3 to 4 hours. This aspect also requires further inquiry.

7. The enmity between the parties is asserted by the complainant and that fact coupled with the above observations makes it difficult to eliminate *mala fide*, in throwing the net wide and involving the applicants, conclusively at this preliminary stage. Accordingly, the case of the applicants being one of further inquiry, their interim pre-arrest bails are confirmed on the same terms and conditions.

  
JUDGE