

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Crl. Bail Application No. S- 21 of 2019**

Ali Nawaz Khuwaja.....Applicant

Versus.

The State..... Respondent

For Hearing of bail application.

Mr. Ghulam Shabbir Dayo Advocate along with applicant.

Syed Sardar Ali Shah Rizvi, Deputy P.G for the State.

**Date of hearing:** 29-04-2019

**Date of decision:** 29-04-2019

**ORDER**

**ZAFAR AHMED RAJPUT J.**, Through instant Crl. Bail Application, applicant/accused Ali Nawaz s/o Naseer Muhammad by caste Khuwaja has sought pre-arrest bail in Crime No. 56 of 2016, registered at P.S, Ahmedpur-Khairpur under Sections 302, 147 & 149 P.P.C. His earlier bail application bearing No.2898 of 2018 was heard and dismissed by learned II-Additional Sessions Judge, Kharipur vide order dated 22.12.2018. The applicant was admitted to ad-interim bail by this Court vide order dated 08.01.2019, now he seeks confirmation of the same.

2. Briefly stated, the facts of the case are that on 03.09.2016 at about 1730 hours, complainant Mujeeb-ur-Rehman lodged aforementioned FIR stating therein that there exists murderous enmity with the applicant party as brother of applicant, namely, Ali Sher was murdered and the applicant used to issue threats that he would take revenge of his brother; that on 03.09.2016 after taking night meal,

complainant, his sisters Mst. Saima Bano, and Rizwana Bano, aunty Mst. Feroza and mother Mst. Hamidan went to sleep in the house, but they woke up on some noise at about 1130 hours and saw six armed persons each 1. Ali Nawaz (applicant) armed with K.K, 2.FEroze alias Wali Muhammad armed with K.K, 3. Mir Khan armed with repeater, 4. Waqar Ali armed with gun, 5. Waseem Ali armed with gun and 6. Muneer armed with pistol, who pointing their weapons asked them not to make cry as they would take revenge and would commit murder of mother and saying so, applicant Ali Nawaz made dire fire of K.K at Mst. Hamidan, which hit at her right side of chest and she fell down on the ground. Thereafter, accused persons fled away by saying that they took revenge of their brother Ali Sher; that the complainant informed the police of P.S, Ahmedpur through mobile phone, on that SIP/SHO Sohail Ahmed Shar along with staff arrived at the lace of incident, where after completing legal formalities brought dead body of Mst. Hamidan to Civil Hospital, Khairpur through P.C Abdul Sattar and after her burial, FIR was recorded.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that there is inordinate delay of 17 hours in lodging of FIR, which has not been explained by the complainant, hence deliberation and consultation before recording of FIR cannot be ruled out; that all the PWs are close relatives of the compliant, hence they are interested witnesses; that it is an admitted position that there is murderous enmity between the applicant and the complainant party as prior to

present FIR, four persons of the applicant party had been murdered by the complainant party, as such four FIRs had been registered against them in which the applicant is one of the star witness; that besides Crimes No.99 of 2012 and 26 of 2013, FIR bearing Crime No. 03 of 2016 is registered at P.S, Katcho Ketu district Kashmir at Kathkot against father of the complainant and it is because of that complainant party managed false story and lodged false FIR against the applicant and others; that it does not make a sense that despite availability of complainant at the spot, applicant would take revenge of his brother's murder with old aged mother of the complainant. Had there been any weight in the false story of the complainant, he would have been targeted; that the applicant is respectable person and retired banker and since story narrated in the FIR by the complainant was false and baseless, I.O recommended the disposal of case under A-class but the learned Judicial Magistrate did not agree with his report and took cognizance of the offence.

4. On the other hand, learned D.P.G for the State has opposed the confirmation of interim bail granted to the applicant on the ground that he is nominated in the FIR with specific role of causing fire with his K.K. at the murder of complainant who succumbed to the injuries at the spot; that such incident has been witnessed by the family members of the complainant as the incident took place inside the house of complainant in night hours. He has, however, admitted that more than three FIRs are registered on complainant party for causing

murder of family members of the applicant, wherein the complainant himself is absconder.

5. Heard learned counsel for the applicant as well as learned D.P.G for the State and perused the material available on record. It is an admitted position that the FIR is delayed by 17 hours and even before lodging of FIR police on the call of the complainant reached at the spot but even no N.C of the incident was recorded, hence deliberation and consultation to implicate the present applicant with mala fide intentions cannot be ruled out. It has been stated in the FIR that applicant has caused murder of Mst. Hamidan, mother of the complainant in revenge of his brother while complainant was himself present in the house at the relevant time with empty hands and he being male member was at the mercy of the applicant party to take revenge of his brother from the complainant, but he did not make attempt for it and took revenge from the mother of the complainant. It is yet to be determined if the alleged incident of murder of complainant's mother has taken place in a manner described in the FIR keeping in view the fact that the applicant has been declared innocent by the police in investigation. Hence, it is a fit case of further enquiry as envisaged under Sub-section 2 of Section 497 Cr.P.C. Accordingly, interim pre-arrest bail earlier granted to the applicant vide order dated 08.01.2019 is hereby confirmed on same terms and conditions.

6. Needless to mention here that in case applicant misuses the concession of bail in any manner whatsoever, learned trial Court shall be at liberty to cancel the bail of the applicant after serving him requisite notice, as per law.

**J U D G E**