

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-515 of 2017.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For Hearing of bail application.

28.02.2019.

Applicants are present in person.

Mr. Aitbar Ali Bullo, D.P.G.

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Muhammad Saleem Jessar, J- Applicants Muhammad Ismail, Abdul Waheed and Tariq are present on bail in terms of order dated 25.10.2017. After furnishing surety before this Court, the applicants along with co-accused have been appearing before the trial Court regularly where the formal charge has been framed against them by the trial Court on 23.09.2017. Progress report furnished by the trial Court dated 23.11.2018 shows that the accused have been attending but the process issued against the complainant party has been returned unserved, however, efforts are being taken to procure the attendance of the witnesses.

2. The case after investigation was challaned by the police which is now pending trial before the Additional Sessions Judge-I, Shahdadkot vide Sessions Case No.287 of 2017 (Re: State v. Muhammad Ibrahim and others.)

3. Per prosecution case as mentioned in the FIR lodged by the complainant Muhammad Yousuf are that accused Muhammad Ibrahim who is the brother of the complainant and his sons Tariq and others have been demanding the hand of his daughter Mst. Aasia to whom he disclosed that he has already made commitment with his second cousin Abdul Karim for his son Muhammad Ishaq, upon which they have been annoying and were saying that they would take the life of his daughter. On fateful night the complainant along with his wife

Mst. Basheeran, his mother-in-law Gul Bakhat and daughter Mst. Aasia (deceased) after having meal went to sleep on separate cots and the electric bulbs were glowing. On 11.07.2017 at about 12:45 (night) they awakened upon the commotion and identified each one accused Muhammad Ibrahim having gun, Muhammad Ismail having gun, Abdul Waheed and Abdul Hameed both armed with hatchets and Tariq having lathi were standing who overpowered upon them with the show of weapons, said that in spite of demand, he did not give the hand of his daughter and has engaged her with other relative, therefore they would commit the murder of his daughter. Due to fear of weapons they remained mum. Meanwhile co-accused Muhammad Ibrahim caused straight fire from his gun to commit Qatl-i-Amd of his daughter Mst. Aasia which hit her on left eye who fell down while raising cry. On their hue and cry all the accused decamped from the scene and to such effect instant FIR was lodged.

4. During investigation police have arrested co-accused Muhammad Ibrahim on 14.07.2017 and Abdul Hameed on 22.07.2017 and after completion of investigation charge sheet was filed against them on 21.08.2017.

5. Applicants present in person submit that the deceased was their cousin and was lovely to them as was to her parents. Therefore, it is out of their image even to think about her murder. They further submit that in order to take revenge of grudge and for ulterior motive, the complainant has implicated them in this FIR. They further submit that they have been assigned no role in the FIR nor any overt act is assigned except mere their presence. They submit that after furnishing surety before this Court they are appearing before the trial Court and have not misused the concession of bail extended by this Court in terms of ad-interim bail order dated 25.10.2017.

6. Learned D.P.G appearing for the State after going through the record submits that as per FIR only mere presence of the applicants

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have been shown and no active role is assigned to them. However, they are nominated in the FIR, therefore, he opposes the confirmation of bail.

7. The trial Court furnished its report which is self explanatory has been perused. Para No.4, whereof is reproduced as under :

"Q4. That after receipt of R&Ps of the case on 12.10.2018, process has been issued for procuring attendance of witnesses. However, each time the process has been returned un-served on the witnesses of the case. Nevertheless efforts are being made for procuring attendance of witnesses. The advocate for the accused has also not attended the Court on any date of hearing. The case involves capital punishment and cannot proceed without advocate for the accused."

8. I have heard applicants in person as well as learned D.P.G and have gone through the material made available before me on record.

9. No doubt the applicants are nominated in the FIR but no specific role or any overt act is assigned to them except mere presence. Though the charge has been framed against the applicants on 23.09.2017 even the complainant party has not been procuring attendance of the witnesses to adduce their evidence. The offence as alleged is said to have taken place in the odd hours of the night and mistaken identity or false implication of the applicants cannot be ruled out. The grudge between the parties has been admitted by the complainant in his FIR hence malafide on the part of complainant can be visualized. After grant of interim bail by this Court the applicants have not misused the concession nor such report or any complaint has ever been filed by the complainant before trial Court or before this Court to show that they have misused the concession of bail extended to them.

10. Admittedly the parties are on strained relations over matrimonial affairs/dispute hence malafide on the part of prosecution is evident. Therefore the arrest of the applicants is motivated for ulterior motives, which is prime ingredient of pre arrest bail as has been defined by Hon'ble Supreme Court of Pakistan in its numerous judgments.

Reference can be placed upon the case of Rana MUHAMMAD ARSHAD v. MUHAMMAD RAFIQUE and another (PLD 2009 Supreme Court 427). Besides the concession in shape of interim bail extended to the applicants has not been misused by them and they have been enjoying liberal life right from their admission to interim pre arrest bail. Thus, to put them behind the bars at this juncture would not serve any legal or technical purpose. Reference can be held from the case of Abdul Halcem Lakho v. Abdul Karim alias Karim Bux and others (2005 SCMR 1539).

11. In view of above facts and circumstances, I am of the considered view that the case against the applicants require further enquiry as contemplated under subsection (2) of Section 497, Cr.P.C. Accordingly, instant bail application is allowed. Consequently, the interim bail granted to applicants on 25.10.2017 is hereby confirmed on the same terms and conditions. The applicants present are directed to make their presence before the trial Court on each and every date of hearing without fail. Copy of this order be facsimiled to learned trial Court for its record through learned Sessions Judge concerned.

12. Needless to mention here that the learned trial Court shall not be influenced by observations made in this order while deciding the case of the applicants as the observations made hereinabove are tentative in nature.


Judge

M.Y.Panhwar/**