

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Ist. Crl. Bail Appln. No.S-134 of 2019.

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.

22.03.2019.

Mr. Amanullah Luhar, advocate holding brief for Mr. Abdul Ghani Bijarani, advocate for the applicant along with applicant (on bail).

Mr. Sharafuddin Kanher, A.P.G.

Muhammad Saleem Jessar, J- Through instant Crl. Bail Application, under section 498, 498-A, Cr.P.C, applicant Sohrab son of Sathi Khan, seeks his admission on pre arrest bail in Crime No.04/2010 registered at Police Station Ghora Ghat, under sections 17(3), 17(4), 337-H(ii), 148, 149, PPC.

2. Pre arrest application bearing Crl. Bail Appln. No.443/2018 was preferred by the applicant before the Court of Ist. Additional Sessions Judge, Kandhkot, who by means of order dated 31.08.2018 declined the bail application

3. The crux of prosecution case is that on 05.06.2010, the complainant Jumo son of Ali Muhammad lodged the FIR at above Police Station mentioning therein that he along with his brother Sijawal, cousin Mir Hazar went for grazing cattle at the land of Sattar Bux Sundrani Khatri Block, where accused every one Illahi Bux armed with KK, Abdul Khaliq, Mehar, Gagan, Jagan, Deedar @ Tapo, Bashir, Anwar, Arbelo, Azeem, Arbab, Ghulam Rasool armed with KKs and three unidentified persons armed with guns arrived there. Accused Illahi Bux gave Hakal and asked to leave the cattle, then all the accused took cattle. It is also mentioned in the FIR that complainant party resisted on robbing of cattle, on which accused Illahi Bux directly fired from his KK at Mir Hazar, which hit him on his forehead, who fell down

while raising cries. Thereafter all the rest accused made aerial firing upon complainant party. Thereafter complainant party noticed that Mir Hazar sustained firearm at his forehead through and through and was dead. After postmortem the dead body of the deceased Mir Hazar was buried and the complainant lodged the FIR to the above effect.

4. Mr. Amanullah Luhar, who is holding brief for Mr. Abdul Ghani Bijarani, learned counsel for the applicant submits that no specific role of firing at deceased is assigned to him; however mere his absconsion does not intercept the way to grant him bail. Therefore, he submits that the ad-interim already granted to applicant may be confirmed.

5. Learned A.P.G opposes the bail application on the ground that the applicant has remained fugitive from law, therefore, he does not deserve the concession of extra ordinary relief in shape of interim pre arrest bail. However, he admits that no specific role or any overt act is assigned to him.

6. I have heard learned counsel for the applicant as well as learned A.P.G for the State and have gone through the material made available before me on record.

7. Admittedly no overt act or any specific role is assigned to the applicant. As far as absconsion of the applicant is concerned, it is settled law that mere absconsion does not intercept the way for grant of bail to an accused, if otherwise merits of the case are favouring him. In the present case, no doubt the applicant remained fugitive/absent for a noticeable period but subsequently as and when he learnt about pendency of instant case, he rushed himself voluntarily before the trial Court where he was granted ad-interim pre arrest bail and subsequently same was recalled and then he approached this Court. In view of such conduct of the applicant, vis-à-vis voluntarily appearance before the trial Court, the alleged absconsion is not much of consequence. Firthermore, I am fortified with the dictum laid down by

the Hon'ble Supreme Court of Pakistan in case of Khalil Ahmed Soomro v. The State (PLD 2017 Supreme Court 730). The cumulative effect and upshot of the discussion is that the applicant has made out a good prima facie case for his admission on pre arrest bail within meaning of sub-section (2) of Section 497, Cr.P.C. Consequently instant bail application is allowed. Interim order passed earlier dated 04.03.2019 is hereby confirmed on the same terms and conditions.

Judge

