

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1162 of 2016

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Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on	:	21.02.2018	
Decided on	:	21.02.2018	
For Applicant	:	Mr. Sardar Shabbir Sultan, Advocate.	
For State	:	Mr. Dewan Bhuromal, DDPP a/w SI-Maqsood of PS Docks	

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**Mrs. Kausar Sultana Hussain, J.**:- On dismissal of bail Application No. 1494 of 2014, (wrongly mentioned in Criminal Bail Application number as 788/2016), by the trial Court, vide order dated 30.07.2016, the applicant Muhammad Saleem has approached this Court, by filing instant bail application under Section 498 Cr.P.C, for interim pre-arrest bail in case FIR No. 240/2013, under Section 392/397/34 PPC registered at P.S. Docks, Karachi.

2. Story of the prosecution in nutshell is that complainant is residing at the address, given in the FIR alongwith his family and working in Hakeem Godown. On 07.07.2013 at 0300 hours he left his house to go to godown and when reached at street, he saw four persons, aged between 19/22 years, three persons out of them holding pistols in their hands, they caught hold the complainant, muffled his face with cloth and forcibly by dragging him brought at the door of his house and asked him to call his wife and direct her to open the door, when she came at the door then one accused pushed his wife inside and three accused entered in the house with him, who muffled her face too and confined both of them in one room, after passing about 5/10 minutes accused present outside forcibly brought his colleague Ibrahim Khalil son of Ali Hassan inside the house and forcibly confined him too in bathroom, the accused persons were remained busy in looting his house for about 45 minutes and then they went away, thereafter he checked his house and found door of the cupboard as broken and cash of Rs. 18,000/-, one gold coin weighing one tola and nose pin were missing, while leaving house they also snatched China Cell from him and Nokia Cell from his colleague Ibrahim Khalil, after 10/15 minutes he heard voice of firing, he and his colleague Ibrahim Khalil came out and saw that the area watchmen Ali Hussain and Amir Hussain were lying there in injured condition, while one person was caught hold by the persons gathered there, who started beating the said apprehended person, he saw that the watchman Amir Hussain received bullet injury on his left arm and blood

was oozing and watchman Ali Hussain received bullet injury on his chest, who was in severe injured condition, the area people sent the said watchmen to Civil Hospital through Chippa Ambulance, while the apprehended accused disclosed his name as Dilawaer son of Muhammad Alam and the names of his absconding accomplices as Saleem, Mustafa and Jamal son of Abdul Hassan @ Takiya, while from apprehended accused one pistol without number, load magazine with 03 rounds alive was recovered. He produced the apprehended accused Dilawar with the help of his colleague Ibrahim and area people, hence this FIR.

3. Learned counsel for the applicant/accused has argued that applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention. He further argued that complainant lodged the FIR after delay of about 5 hours, while the PS is only 2 K.M away from the place of alleged incident. Learned counsel for the applicant/accused argued that applicant/accused was implicated in this case on the basis of the statement of co-accused, which is not admissible under Article 38 & 39 of Qanoon Shahadat Order 1984. He further argued that no specific role has been assigned to applicant/accused, which makes the prosecution case highly doubtful. Learned counsel for the applicant/accused argued that the offence does not fall within the prohibitory clause of section 497 Cr.PC. Lastly, learned counsel for the applicant/accused has prayed for release of the applicant/accused on bail.

4. Learned DDPP has strongly opposed the bail application on the ground that the applicant/accused is involved in the present heinous crime. He further argued that two watchmen received bullet injuries on their arms and chest and accused Dilawar was apprehended red handed with the help of vicinity people and still he is behind the bar. He further pointed out that co-accused Dilawar disclosed the name of his accomplices including the name of present applicant/accused, whose name has been mentioned in the column No. 2 of the charge sheet with the name of his parentage. The learned DDPP has pointed out that present applicant/accused first obtained ad interim order of Bail Before Arrest from the Court of learned Vth Additional Sessions Judge, Karachi-West, but he did not join the investigation of this crime, that's why no supplementary challan could be submitted by the I.O before the trial Court till today. Learned DDPP has further pointed out that the applicant/accused during the trial of present crime slipped away from the trial Court and thereafter, he obtained Bail Before Arrest order from this Court. At this stage, this Court asked the accused, present in Court that whether he has ever appeared before the I.O of this case after obtaining Bail Before Arrest order, either from the Court of learned Vth Additional Sessions Judge, Karachi-West or this Court?, he

replied that he never joined the investigation of this crime. I.O. present in Court also taken the same view. Lastly, he prayed for rejection of pre-arrest bail application of the applicant/accused, on the grounds argued by him before this Court.

Record of this case shows that one of the watchman namely Amir Hussain, who had received bullet injury on his chest, later on succumbed to his injuries, and the I.O. of this case after preparation of inquest report under Section 174 Cr.PC inserted section 302 PPC in the charge sheet, but the learned counsel for the applicant/accused did not mention section 302 PPC in the title of this bail application, which amounts to concealment of the facts from this Court and cannot be ignored.

Admittedly, the applicant/accused inspite of granting ad-interim pre-arrest orders in his favour for two times from the learned trial Court as well as from this Court, never joined the investigation of this crime, which is clear violation of Court's orders and amounts to misuse of the concession of ad-interim pre-arrest orders, as after granting ad-interim order in favour of the applicant/accused, he was supposed to join the investigation by appearing before the I.O. and get record his statement. It has also come on record that during trial of this case, before the trial Court, he jumped from the law, in result of which the proceedings of the trial Court have been hampered and now if his Bail Before Arrest order is to be confirmed, he may repeat the same attitude and create hurdle in the proceedings of the trial Court, therefore, in my view he is not entitled for the confirmation of ad-interim bail order, earlier granted to him by this Court on 16.08.2016, hence the said order of ad-interim pre-arrest order dated 16.08.2016 is hereby re-called.

Bail Before Arrest application is hereby dismissed with the above observations.

It needs not to iterate that the observations made hereinabove are tentative in nature and shall not affect the merit of the case.

**J U D G E**