

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

Cr. Bail Application No.S-496 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<p><u>21.09.2017.</u></p>	<p>For hearing.</p> <p>Mr. Imran Ali Tunio, Advocate alongwith applicants. Mr. Shahid Ahmed Shaikh, D.P.G for the State. None present for the complainant.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Applicants/accused are present on interim pre-arrest bail granted to them by this Court vide order dated 29.06.2017. Today this bail application is fixed for confirmation or otherwise.</p> <p>2. Brief facts of the prosecution case are that complainant Mst. Sanam Ismail on 07.06.2017 appeared at P.S. Naseem Nagar and lodged F.I.R. alleging therein that on 02.04.2017, she alongwith her brother Syed Raza Hussain came at Hyderabad to meet with friend of husband of complainant, namely Ikramuddin Qureshi and they went to Roopa Mari Hotel for taking night meal in the Car No.AQJ-393 Toyota Corolla Saloon Golden Metallic Colour, Model 2005 and they parked the same at about 2100 hours in parking area. After taking meal when at about 2230 hours, they returned back to the parking area where the above mentioned car was not available, as such, complainant confirmed that her car has been stolen away by the thieves. Thereafter, complainant remained in search of her car to which she came to know that the said car has been stolen by the brother of her late husband namely Nusrat, Ayoub, Khalid, all sons of Khuda Bux. Thereafter, complainant alongwith her brother Syed Raza Hussain and friend of her husband Ikramuddin went to the village Chhajra, where they saw that the car of complainant was available there. Complainant asked the accused persons for return of the same, but the same was not returned to the complainant. Hence, present F.I.R. was lodged after getting order from Honourable District and Sessions Judge, Hyderabad.</p>

3. It is stated by the learned counsel for applicants that applicants are innocent, they have not committed the offence to which they are charged and they have been implicated by the complainant with malafide intention. He further submits that there is family dispute and prior to this one another F.I.R. was lodged bearing crime No.63/2016 against the accused Nusrat Hussain. He further submits that alleged recovery was affected from the village of applicants/accused, though accused are resident of Hyderabad, hence recovery is not part of applicants/accused. He further submits that there is delay of two months in lodging the F.I.R. without plausible explanation. He further submits that place of incident is busy area, despite that no any independent witness has been cited by the complainant and incident is unseen. He further submits that all the PWs are interested one. Case of applicants/accused does not fall within the prohibitory clause of section 497, Cr.P.C, therefore, he prayed for confirmation of interim bail. In support of his contention, counsel for applicants/accused relied upon the case laws reported in 2010 MLD 311 [Karachi] and 2009 MLD 665[Lahore].

4. Learned D.P.G. for the State has opposed this bail application on the ground that names of applicants are appearing in the F.I.R with specific allegation that the trial Court has refused interim bail to the applicants on cogent reasons.

5. I have given my anxious thoughts to the contention raised at the bar and have gone through the police papers so available before me.

6. It appears from the record that the alleged incident has taken place on 02.4.2017, but F.I.R. has been lodged on 7.6.2017 after the delay of about two months and five days, for which, no satisfactory explanation has been furnished, as such, on this ground alone false implication of the present applicants/accused in this case cannot be ruled out and this aspect of the case will be determined by the trial Court at the time of trial. It also appears from the record that complainant parked her car bearing No.AQJ-393 at parking of Roopa Mari hotel, but after expiry of considerable time, the complainant came to know that her car was stolen by the applicants. It is a case of unseen incident and nothing on record that who informed to the complainant about the stolen of car by the applicants. Source of information is also missing in

this case. It is also an admitted that challan against the applicants/accused has been submitted before the competent Court of law and the present applicants/accused are no more required for further investigation. It is stated by the applicants that they are regularly attending the trial Court without any substantial progress in the matter. The applicants have been challaned under section 381-A, PPC, for which, punishment is not more than seven years, thus, it appears that case of the applicants do not fall within prohibitory clause of section 497, Cr.P.C, therefore, in the circumstances grant of bail is a rule and refusal is an exception as held by superior Courts in many cases and no exceptional circumstance has been pointed out in this case by learned D.P.G to withhold the bail of the applicants.

7. As discussed above, I have come to this conclusion that applicants/accused have made out a case for confirmation of interim pre-arrest bail. I, accordingly, confirm the interim pre-arrest bail already granted to the applicants vide order dated 29.06.2017 on the same terms and conditions with direction to the applicants to appear before the trial Court and face the trial.

8. Needless to mention here that the observations made herein above are tentative in nature and shall not affect the merits of the case.

The bail application stands disposed of in the above terms.

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JUDGE.