

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

Cr. Bail application No.S- 1032 of 2012

DATE

ORDER WITH SIGNATURE OF JUDGE

03.10.2017.

Agha Waqar Ahmed Advocate for applicants/accused

Mr. Hameedullah Dahri Advocate for complainant

Mr. Shahid Shaikh DPG.

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ABDUL MAALIK GADDI, J: Applicants/accused are present on interim pre-arrest bail, granted to them by this court vide order dated 31.12.2012. Today this bail application is fixed for confirmation or others.

2- Brief facts of prosecution case are that on 26.10.2012 complainant alongwith his brothers Tariq and Akbar were returning to their village in their Suzuki pickup after selling their cattle at about 5.0 pm, when they reached at Qaiser Canal bridge at the road leading from Tando Jam to Tando Qaiser, where one white colour Mehran Suzuki car overtook them and came in their front and stopped their car from which five persons came out, out of whom they identified two persons namely Qaiser Khan and Fida Hussain both sons of Qaimuddin Nizamani who were armed with TT pistol and three unknown persons to whom they could identify if seen again, from whom two were armed with repeaters and one with Revolver, they came out of car and started abusing and issuing deadly threats. They remained quiet due to fear of weapons and Qaiser Khan, Fida Hussain and three unknown persons pointed their arms at them and said come

out from vehicle. They came out, thereafter Qaiser Khan robbed Rs.337,000/- from the pocket of complainant and one mobile of Nokia Company X-2 and Fida Hussain robbed Rs.5300/- cash and one mobile phone, one gold locket weight one Tola from Akbar Khan and from unknown persons one person robbed Rs.3200/- from his pocket and one mobile phone from

Tarique and said accused after making assault and firing escaped away in the same car by turning towards northern side. After that complainant after obtaining the order from the court of law lodged the instant FIR.

3- Learned counsel for applicant submits that alleged offence took place on 26.10.2012 and FIR was lodged on 15.11.2012, according to him there is delay of 19-days and such delay is not satisfactorily explained by the complainant. He further submits that there is admitted dispute in between applicants/accused and complainant party with regard to the landed property situated in Tando Qaiser Hyderabad and in this respect cases are pending in different courts in Hyderabad, therefore, according to him false implication of applicant/accused in this case cannot be ruled out. He further submits that this matter pertains to the year 2012 but the trial has still yet not been concluded and applicants/accused are appearing before this court as well as before the trial court without any substantial progress in the matter, therefore, he prayed for confirmation of bail.

4- Learned DPG assisted by learned counsel for complainant have opposed this bail application on the ground that applicants/accused are nominated in the FIR with specific allegation that applicants/accused robbed Rs.337,000/- and mobile phone from complainant as well as Rs.5300/- and gold chain from PW Akbar, therefore, they are not entitled for bail.

5- Parties Advocates have been heard and perused the record.

6- It appears from the record that incident took place on 26.10.2012 whereas FIR was lodged by complainant Maqbool Ahmed on 15.11.2012 at police station Tando Jam after delay of 19 days for which no satisfactory explanation has been furnished. From the perusal of police papers it appears that there is dispute in

between the parties with regard to the landed property as well as plot situated in Tando Qaiser and such cases are pending between the parties in different courts at Hyderabad, therefore, on this ground false implication of applicants/accused in this case cannot be ruled out. It is admitted

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position that case has been challaned, applicants/accused are no more required for investigation. Since there is delay of 19-days in lodging of FIR, therefore, it is to be determined at the time of trial whether offence as alleged in the FIR allegedly committed by applicants/ accused in a fashion as narrated by the complainant or otherwise. It is stated by learned counsel for applicants/accused that applicants/ accused are appearing before this court as well as before the trial court without any substantial progress in the matter and still the trial of applicants/accused has not been concluded even after lapse of four years. It also appears from the record that in this matter no independent person of the locality has been cited as witness in mashirnama, therefore, it is also to be determined at the time of trial that as to why the private person has not been cited in this case, although incident has taken place in day light and in a populated area.

7- In view of above, the applicants/accused have made out a case for confirmation of their bail, I, accordingly allow this bail application and confirm the interim pre-arrest bail, already granted in favour of applicants/accused on same terms and conditions with direction to applicants/accused to appear before the trial court to face their trial.

8- Since the matter pertaining to the year 2012, therefore, the trial court is directed to proceed the matter expeditiously and preferably decide the matter within a period of three months after receipt of this order. No unnecessary

adjournment shall be granted to either side. The compliance report be submitted through Additional Registrar of this court.

9- Before parting with the order, I would like to make it clear that observations if any, made in this order, is tentative in nature and shall not affect the merits of the case.

JUDGE

A.Rasheed