

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.1668 of 2018

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Applicant : Naseer Ahmed, through
Syed Jameel Ahmed Shah, advocate.

Versus

Respondent : The State,
Through Ms. Rahat Ahsan, Additional P.G.

Mr. Shabbir Ahmed Kumbhar, advocate for
the complainant.

Date of hearing : **09.04.2019**

Date of decision : **09.04.2019**

ORDER

NAZAR AKBAR, J. The Applicant Naseer Ahmed after failing to obtain pre-arrest bail from the Court of I-Additional Sessions Judge, Thatta in FIR No.124/2018 under Sections 302, 114 and 504/34 PPC registered at P.S Gharo, has preferred this bail application. The applicant was granted interim bail by this Court by order dated **11.12.2018** and now it is fixed for confirmation or otherwise.

2. Brief facts as stated in the FIR are that the complainant Moosa Jokhio owns Cabin in Gujjo town, which was run by his son Sadam aged about 22/23 years and his nephew namely Eiddan Johio. On 23.10.2018, they were sitting at the Cabib when at 01:30 p.m. one yellow colour Massey Tractor with trolley parked near their Cabin and (1) Naseer Jokhio (present applicant) armed with pistol (2) Sher Ali Jokhio with hatchet, (3) Wali Muhammad alias Waloo Jokhio having spade/belcha in his hand and (4) Nazeer Jokhio armed with

iron rod alighted from it and as soon they reached there, the applicant/ accused Naseer Jokhio pointed the said pistol upon the complainant party by saying them raise up their hands and they will not be spared and then instigated rest of accused by saying to kill them by inflicting blows, since Sadam (son of complainant) had abused them over the matter of causing loss of crop and cattle. On such instigation, accused Nazeer Jokhio caused iron rod blow to Sadam (son of the complainant) which hit at his face below the left eye and then accused Wali Muhammad alias Waloo Jokhio inflicted belcha/spade blow at his head near the left ear and thereafter accused Sher Ali Jokhio inflicted hatchet injury to Sadam at his head behind the right ear, due to which complainant's son fell down on the spot. The accused the rushed towards complainant and his nephew Eiddan to kill them but in the meanwhile Khair Muhammad Jokhio, Ahmed Khan Jokhio and other people of the town came there and interfered and saved them. Thereafter all the accused persons while abusing boarded on the same tractor trolley and went away. The complainant then took his son Sadam in injured and unconscious condition to Civil Hospital Makli, where doctor after examination, declared him dead. After necessary formalities by police and the doctor, the brought dead body to their village, buried him and thereafter lodged such FIR against the accused persons.

3. Learned counsel for applicant has mainly contended that the applicant/ accused was not present at the place of incident as he was on duty at Karachi on the relevant date and time. He further contended that there is a cross-version of the occurrence as the complainant party had attacked upon co-accused on the same date at 1300 hours and caused injuries to Sher Ali and while said Ali Sher was taken to hospital, on the way said accused again attacked and

during said attack, Saddam also got injuries and later succumbed. Such counter FIR No.127/2018 was also registered. He argued that the allegation against the applicant/accused is only instigation and being armed with pistol but no overt act has been assigned nor he used the weapon. He lastly contended that since the applicant/accused has been falsely implicated in this case with malafide intention and ulterior motive, therefore, his interim pre-arrest bail may be confirmed. In support of his contentions, learned counsel for the applicant/accused has relied on the cases reported as *Aamir Bashir and another vs. The State and others (2017 SCMR 2060)* and *Syed Darbar Ali Shah and others vs. The State (2015 SCMR 879)*.

4. Conversely, learned counsel for the complainant has strongly opposed the bail application and contended that the applicant/accused is nominated in the FIR with specific role of instigating the co-accused to kill the deceased Saddam and on his instigation, the remaining three co-accused committed the heinous offence, therefore, the applicant/accused is also liable for the commission of offence. He further contended that the plea of alibi in respect of applicant/accused carry no weight.

5. Learned Additional P.G has also opposed the confirmation of bail to the applicant/accused on the ground that the applicant is involved in a heinous crime and nominated in the FIR. The eye witnesses have supported the contents of FIR, therefore, in terms of Section 497 Cr.P.C he is not entitled for concession of bail.

6. I have considered the arguments advanced by the counsel for the parties and examined the contents of FIR and challan.

7. The contention of the learned counsel that the applicant was not present at the time of incident on the basis of CDR report is

halfhearted plea which cannot be considered by the Court at pre-arrest bail stage since eye witnesses of the incidents have confirmed his presence at the crime scene. The ground of alibi on the basis of Call Data Record (CDR) is very weak plea as CDR can prove only that mobile phone was somewhere else, the evidence of applicant's presence on duty at Karachi should have been shown by some document alongwith the CDR. The ground of cross version of the incident is also unfortunately very weak since cross FIR was not supposed to be registered with delay of six days by the complainant party (accused herein) for the simple reason that they have not suffered any serious injury and they were able to approach the police station without loss of time. The contents of so-called second FIR are in fact admission of accused party that Saddam Jokhio has died due to the injuries caused by them. It appears to be afterthought as even in their own FIR No.127/2018 the complainant/ accused party has reported death/murder of Saddam Jokhio due to the injuries in fight with them and only minor injuries were received by the accused party. The complainant in the present case arising out FIR No.124/2018 has lodged FIR of a murder of his son at the hands of the accused four days prior to the second FIR lodged by applicant/ accused party. Therefore, in the peculiar facts of the case the question of cross version of the FIR does not arise or at least has no weight for grant of bail in which the complainant has lost his young son of about 20/22 years of age and no serious injury has been sustained by the complainant party of the cross FIR; The applicant/accused is a police official and, therefore, his influence on police to register second FIR after six days and also to place his name in the column No.2 cannot be ruled out. The learned trial Court on police report under **Section 173** of the **Cr.P.C** has, therefore, rightly ordered that present applicant shall also be prosecuted alongwith

other co-accused. The eye witnesses have been named in the FIR who have seen the incident of heinous crime and in their 161 Cr.P.C statements they have supported the version in the FIR that the applicant was present at the crime scene alongwith pistol in his hand to encourage the co-accused to commit the heinous offence and keep the father of victim away from his son when he was beaten to death on the instigation of the applicant by his brothers. The applicant has failed to bring a case of pure mala fide of complainant for impleading him in the murder of son of complainant.

8. In view of the above, the applicant is not entitled to pre-arrest bail, therefore, instant bail application was dismissed yesterday by short order dated **09.04.2019** and interim bail granted on **11.12.2018** was recalled.

9. The observations made hereinabove are tentative in nature and would not influence trial Court while deciding the case of the applicant/accused.

JUDGE

Karachi
Dated: 10.04.2019

Ayaz Gul