

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. Cr. B.A. No.S- 353 of 2020
2. Cr. B.A. No.S- 750 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

09.11.2020

Mr. Muhammad Suhail Jamali Advocate for applicants.

Applicants are present on interim pre-arrest bail.

Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Mr. Muhammad Bux Jamali Advocate for complainant.

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ORDER

Muhammad Saleem Jessar, J.-By this common order, I propose to dispose of aforementioned two bail applications, as both arise out of one and same crime and common question of law as well as fact is involved.

2. Through said applications, applicants Muhammad Ismail and Murtaza alias Ghulam Murtaza alias Chuzo seek their admission on pre-arrest bail in Crime No.26 of 2020, registered at Police Station Khadhar, under section 377, 511 PPC. Earlier, bail plea preferred by them before the trial Court has been declined by means of orders dated 18.04.2020.

3. The crux of prosecution case as unfolded in the F.I.R. lodged by complainant Riaz Hussain on 02.04.2020 at 1530 hours at P.S 06.30 p.m, are that on 30.03.2020 his nephew Suhail Ahmed left the house for tuition purpose; however, did not return at home, therefore, he went out to search for Suhail Ahmed when he was informed by Khadim Hussain and Arshad that his nephew Suhail Ahmed has been taken away by Ismail and Murtaza alias Chuzo on a motorcycle, therefore, complainant followed the culprits and when reached near Eid-Gah saw a CD-Motorcycle was parked and the accused were attempting to commit sodomy with him. By seeing complainant party coming towards them both accused boarded on the motorcycle and decamped from scene. Thereafter, complainant appeared at police station where his case was not registered, therefore, he filed Cr. Misc. A. No.682 of 2020 before learned Sessions Judge / Ex-Officio Justice of Peace, Shaheed Benazirabad and during pendency of said application, instant F.I.R. was registered by concerned police.

4. Learned counsel submits that applicants are innocent and have falsely been implicated in this case by complainant in order to exert illegal pressure upon them aims to get resolved the dispute, which is going on between them, in his favour; that allegation leveled in the F.I.R. is of alleged attempt which is yet to be proved by prosecution after recording evidence of prosecution witnesses and the punishment which is provided for alleged offence by law does not exceed the prohibition contained under sub-section (i) of section 497 Cr.P.C. He; therefore, submits that after grant of interim pre-arrest bail by this Court applicants have joined trial of the case without any negligence; however, the complainant has been avoiding to proceed with the case; he, therefore, submits that case against the applicants requires further inquiry and prays for confirmation of interim pre-arrest bail earlier granted to applicants by this Court vide orders dated 21.04.2020 and 07.08.2020, respectively.

5. Learned A.P.G appearing for State opposes bail application on the ground that applicants have been specifically implicated by complainant; besides, the act alleged against them is against society, therefore, they do not deserve any leniency in shape of pre-arrest bail. However, he could not controvert the fact that F.I.R. is delayed for about 03 days and the case is being tried by Court of Judicial Magistrate where after recording evidence of the parties if prosecution may succeed to prove its case even then the punishment of more than 03 years cannot be visualized.

6. Learned counsel for complainant also opposes bail application and submits that accused have misused the concession of interim pre-arrest bail extended to them by taunting the complainant party. He also submits no enmity has been alleged against complainant party; besides the victim as per claim of the complainant is of tender age, therefore, applicants cannot claim bail as of their right. In support of his contention he places his reliance on the case of **Jumma Khan v. The State and 2 others** (2000 PCr.LJ 639).

7. Heard arguments and perused record.

8. No doubt, the Applicants have been specifically implicated by the complainant in F.I.R., but the delay in lodgment of F.I.R. has not been explained satisfactory by complainant. The case is being tried by Court of Judicial Magistrate where after recording the evidence of parties if prosecution may succeed to prove its case against the applicants even then punishment of more than 03 years cannot be visualized. The punishment provided by law for commission of offence under section 377 PPC is 10 years; however, no offence was committed and mere attempt has been shown against the applicants, which is yet to be determined by the trial Court after recording evidence of parties. The contention raised by learned counsel for applicants is

that there is difference in between contents of F.I.R. as well as memo of proposed F.I.R. produced before the Ex-Officio Justice of Peace, which also makes the case of applicants as of further inquiry within the meaning of sub-section (2) of section 497 Cr.P.C. Since the applicants have also joined trial proceedings and no allegation of misusing the concession extended to them by this Court in term of interim pre-arrest bail has been brought on record; therefore, the applications in hand are hereby allowed. Consequently, the interim pre-arrest bail earlier granted to applicants by this Court vide orders dated 21.04.2020 (Cr. B.A. No.S-353 of 2020) and 07.08.2020 (Cr. B.A. No.S-750 of 2020) are confirmed on same terms and conditions. However, the applicants are directed to continue their appearance before trial Court and in case of their failure to appear and / or proceed with the case, the trial Court would be competent to take legal action against them as well as their surety(ies) in accordance with law, without making any reference to this Court.

9. Needless to mention here that observations made herein above are tentative in nature would not influence the trial Court while deciding main case on merits.

10. Copy of order be communicated to trial Court through learned Sessions Judge, Shaheed Benazirabad, for compliance.

JUDGE

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