

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1212 of 2019

Applicants : (i) Muhammad Naveed S/o
Muhammad Saeed
(ii) Muteeb S/o Abdul Hameed
Through Syed Mehmood Alam Rizvi,
Advocate

Complainant : Junaid Qureshi S/o Shams-ud-Din
Through Ms. Farhana Shamim,
Advocate

Respondent The State
Through Mr. Talib Ali Memon,
Assistant Prosecutor General, Sindh

Date of hearing : 08.09.2020

Date of order : 08.09.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.144/2019 registered under Sections 302/34 PPC at PS New Karachi, after their bail plea has been declined by learned III-Additional Sessions Judge, Karachi Central vide order dated 26.06.2019.

2. The brief facts of the prosecution case are that on 08.06.2019 at about 2115 hours complainant Junaid Qureshi son of Shams-ud-Deen lodged FIR at police station New Karachi stating therein that he resides at given address along with his family and his father does the work of fruit and before 3/4 days quarrel had taken place in between the brother of complainant namely Bilal with Muteeb and Hameed later on resolved due to intervention of elders of the locality. On next day, Muteeb along with his relative Naveed son of Saeed had come at the house of the complainant and abused him as well as issued threats of dire consequence thereafter went away. On 08.06.2019 when the complainant

had returned to home from his work his mother narrated entire facts on which father of complainant had gone to the factory of Muteeb and house of Naveed which was situated near the factory of Muteeb for solving the matter where both had come out from factory and house and both have started abusive language and also beaten him but he was saved by neighbourhoods namely Muhammad Javeed and Ashraf and they had also left him at the house. Thereafter both above named accused had also come there and severely beaten father of the complainant with kicks and fists due to which he fell on the ground and hue and cry of people of the locality, they escaped away. Thereafter, the father of the complainant was rushed towards the hospital where the doctor had confirmed the death of the father of the complainant. Hence, the instant FIR.

3. Learned counsel for the applicants/accused has mainly argued that the applicants/accused are innocent and have falsely been implicated in this case; that no quarrel had taken place between the parties on the date of the incident but it was taken place between the children of the parties; that the deceased was already suffering from severe diseases and his death was natural; that as per inquest report under section 174 Cr.P.C. and postmortem report there was no single injury on the body of deceased; that as per CDR the applicants/accused were not present at the place of incident. The learned counsel for the applicants read over the statement of the PWs and stated that the complainant was not present at the place of incident, hence, the matter requires further enquiry; that the charge has been framed and now the matter is fixed for evidence. He prays for confirmation of bail. In support of his contentions, he has relied upon the cases of (1) Abbas v. The State (2000 SCMR 212), (2) Muhammad Shafi and others v. The State and others (2016 SCMR 1593) and (3) Muhammad Arshad and another v. The State through PG Punjab and others (4) Qammar Naseer @ Baitu Masih and others v. The State (2006 YLR 1221), (5) Abdul Sattar Narejo v. The State (2007 YLR 2209),

(6) Bohair Qazi and others v. The State (2012 PCrLJ 1228), (7) Mian Manzoor Ahmed Watto v. The State (2000 SCMR 107), (8) Malik Sajid Ismaeel and others v. The State (2017 MLD 446) and (9) Abdul Khaliq v. The State (2013 YLR 1450).

4. On the other hand, learned counsel for the complainant as well as learned APG has vehemently opposed for confirmation of bail on the ground that applicants/accused have been nominated in the FIR with a specific role and they are involved in the heinous offence.

5. I have heard the learned counsel for the parties and gone through the material available on record. Admittedly the names of the applicants/accused finds place in the FIR with a specific role that both the accused persons beaten the deceased with kicks and fists below as a result deceased Shams-ud-Deen died on the spot. The incident was witnessed by the witnesses namely Muhammad Javeed, Muhammad Abid, Muhammad Ashraf and Nasir, who in their 161 Cr.P.C. statements have fully implicated the present applicants/accused with the commission of the alleged offence.

6. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required

to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation. The learned counsel for the applicants failed to point out any ill-will, enmity or *mala fide* on the part of the Complainant or investigating officer to believe that they have been falsely implicating in the case.

7. Further, at the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. Prima facie, sufficient material is available on record to connect the applicants/accused with the offence.

8. Because of the above, learned counsel for the applicants has failed to make out a case for grant of pre-arrest bail in view of subsection (2) of Section 497 Cr.P.C. Accordingly, the instant Bail Application is dismissed. The interim pre-arrest bail granted to them vide order dated 27.08.2019 is hereby recalled.

9. The cases relied by learned counsel for the applicants/accused are distinguishable from the facts and circumstances of the present case.

10. Needless to mention here that the observations made hereinabove are tentative and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA