

ORDER-SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 851 of 2019

Date of hearing	Order with signature of Judge
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FOR HEARING OF BAIL APPLICATION

Date of hearing as well as short order: 30.07.2019.

Applicants Dildar Ali and Siraj Ahmed through Mr. Rafiq Ahmed Kalwar, advocate.
Complainant Ali Bux through Mr. Fawad Ali Khichi, advocate.
The State through Mr. Sagheer Ahmed Abbasi, APG.

ORDER

FAHIM AHMED SIDDIQUI, J:- This order will dispose of the above pre-arrest bail application moved on behalf of applicants (1) Dildar Ali son of Allah Jurio; and (2) Siraj Ahmed son of Dildar Ali. The applicants are involved in a case registered against them by lodging FIR No. 402/2019 under Section 302 & 34 PPC at PS Shara-e-Faisal (East), Karachi. The applicants' pre-arrest bail application was already declined by the Court of Additional Sessions Judge-VII, Karachi East, as such they approached this Court with a similar plea.

2. The learned advocates for the applicants, complainant as well as the learned APG argued the matter at length. After considering the arguments advanced by either side and going through the record and pondering over the citations, I have observed as under:

- a) The allegations against the applicants are that on account of annoyance with complainant party due to Court marriage of Nausheen daughter of applicant Dildar Ali with Ghulamullah son of Fazal Muhammad (now deceased), the applicants with the assistance of other accused persons caused murder of deceased Fazal Muhammad.
- b) Per F.I.R., due to un-ceremonial marriage of Nausheen, the applicant Dildar has lodged F.I.R. regarding the abduction of his said daughter, which was subsequently disposed of in 'C'-Class.

Even a jirga was held under headship of notable Sain Bukhsh Wasan but on flatly refusal of Nausheen; the applicants and other relatives became furious and threatened to deceased Fazal Muhammad for dire consequences. On 19-05-2019, deceased Fazal Muhammad along with PWs went to their office and while alighting down Karsaz Bridge, the applicants along with their associates intercepted the deceased and within the sight of the witnesses both of them opened fire with their pistols, which were received by the deceased Fazal Muhammad, who lost his life in the hospital due to firearm injuries.

- c) Apparently, the allegations against the applicants are serious in nature and the same are coupled with the motive described within the body of F.I.R. but a strong plea of alibi is available in support of the applicants.
- d) Allegedly, the incident has taken place on 03-05-2019 and reported on 07-05-2019 but as per record, the applicants were not present in Pakistan as they have gone to Saudi Arabia to perform Umrah with the family. Photocopies of air tickets and passport copies annexed with bail application support the plea of alibi.
- e) The counsel for the applicants has produced the original passport of the applicants and his family members and from the immigration entries, it is evident that they departed from Pakistan on 29-04-2019 and returned back on 17-05-2019 i.e. they were not available in the country on the date of incident, as such their availability at the scene of incident is hardly believable at the reported date and time of the incident.
- f) On the basis of the travelling documents of the applicants, even at the date of lodging F.I.R., their presence in the town is a question mark. Nevertheless, the delay in lodging of F.I.R. is sufficient to presume about deliberation and consultation before reporting the incident to police.
- g) Although, it is claimed that the complainant was present at the scene of offence and he has seen the incident but facing the situation of non-availability of the applicant in the country, a twisted version has come on the record allegedly from the mouth

of co-accused, who confessed his guilt before police and he stated that he talked with the applicants on WhatsApp.

- h) If the confession of co-accused is considered as gospel truth, the same will not come in the way of the applicants, since such confessional statement was recorded before police, which is inadmissible unless corroborated after trial.
- i) In the peculiar circumstances of the case, the confession of co-accused before police as well as the statement of the daughter of the applicant No. 1 against her father and brother (applicants) are not free from doubt besides they also attract malice and ulterior motives on the part of complainant and prosecution.
- j) Nevertheless, in view of delay in lodging F.I.R., a strong plea of alibi and availability of malice and ulterior motive due to twisting of the complaining party on their heels from the version of F.I.R., I am of the view that at least a case of pre-arrest bail has been made out in favour of the applicant.

3. In view of the above observations, the order of interim relief extended to them is confirmed on the same terms and conditions. Before parting, I would like to make it clear that if the applicants, after confirmation of this pre-arrest bail, will avoid to appear before the trial Court and the trial Court is satisfied that the applicants become absconders and fugitives to law, then the trial Court is fully competent to take every action against the applicants and the sureties including cancellation of bail without making a reference to this Court.

4. These are the reasons for my short order dated 30-07-2019 and I would like to make it clear that, the above observations are purely tentative in nature and the same is only meant for the disposal of instant pre-arrest bail application and would have no impact or effect on either party's case during trial.

JUDGE

Dated: _____