

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

Cr.Bail.Appl.No.S- 375 of 2020

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

24.08.2020.

Mr. Mian Taj Muhammad Keerio, Advocate for applicant alongwith applicant.

Mr. Shahid Shaikh, D.P.G. for the State.

Mr. Ghulamullah Chang, Advocate for complainant alongwith complainant.

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Applicant / accused Javed son of Badal Khan by caste Rind seeks pre-arrest bail in Crime No.62 of 2020 registered at P.S Seri/Husri, Hyderabad for offences u/s 302, 364, 34 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that one Pervaiz son of Ali Ahmed by caste Jamali lodged FIR against accused on 20.03.2020 at 1700 hours, alleging therein that complainant cultivates his land and the lands of applicant / accused Javed Rind are situated adjacent to the lands of complainant. It is alleged that applicant / accused Javed Rind asked the brother of complainant namely Ali Akbar (deceased) to sell his land to accused to which he refused thereafter, applicant / accused issued threats to the complainant party. It is alleged that on 20.03.2020 at 0300 hours complainant alongwith his brother Ali Akbar (now deceased) and other relatives were present at the land on account of rotation of water. On the torch light, they saw applicant / accused Javed son of Badal Khan Rind and Azeem son of Alan by caste Rind, both armed with pistols. It is stated that accused asked Ali Akbar to sell his land to them to which he refused. Thereafter,

applicant / accused dragged the deceased. Deceased resisted, to which accused persons aimed their pistols and on show of force, it is alleged that deceased Ali Akbar was abducted by accused persons towards their house. Complainant party followed them. Accused entered into the house alongwith deceased. It is stated that complainant and other eye witnesses stood at the hedge of the accused and on bulb light they saw that accused Javed fired upon the brother of complainant namely Ali Akbar and he fell down. Complainant party raised cries and gave such information on mobile phone to Muhammad Moosa Jamali. Police came at the place of incident. Thereafter, complainant took the dead body of his brother to Civil Hospital Hyderabad. After postmortem examination, dead body was handed over to complainant and he took the dead body to home. After funeral ceremonies, he went to the police station and lodged FIR. It was recorded under the above referred Sections.

3. Applicant / accused applied for pre-arrest bail before learned VIIIth Additional Sessions Judge, Hyderabad, the same was declined vide order dated 07.04.2020. Hence, the applicant approached this Court for the same relief.

4. Mr. Mian Taj Muhammad Keerio, learned advocate for the applicant / accused mainly contended that incident took place on the night of 20.03.2020 at 0300 hours and it was recorded at police station on same day at 1700 hours; that there was delay of 14 hours in lodging of FIR, for which no plausible explanation has been furnished. It is further submitted that there was dispute between the parties over the piece of land. It is further submitted that co-accused Azeem has been declared innocent by the police during investigation and the case against applicant / accused requires further inquiry. Mr. Keerio lastly, prayed for grant of pre-arrest bail.

5. Mr. Shahid Shaikh, learned D.P.G. assisted by advocate for complainant argued that the applicant made two fires upon the deceased; that medical evidence corroborated the ocular version; that two empties were recovered from the place of wardat. Applicant / accused had motive to commit the crime. Lastly, it is submitted that the case of co-accused Azeem is distinguishable from the case of present applicant. He has opposed the pre-arrest bail application.

6. I have carefully heard the learned counsel for the parties and perused the material available on record.

7. Complainant Pervaiz in his FIR has stated that applicant and co-accused Azeem abducted the deceased from the lands of complainant at night time to their home in order to commit his murder and in presence of the witnesses they fired upon deceased. Incident was witnessed by complainant and two eye witnesses on the bulb light. Ocular evidence is corroborated by medical evidence. Two empties were recovered from the house of accused where murder of the deceased was committed. Admittedly, there was dispute between the parties over some piece of land and present applicant according to FIR was asking the deceased to sell his land to which, he had refused. After the incident, interim pre-arrest bail was granted to the applicant; according to learned D.P.G, for that reason recovery of pistol could not be made from the applicant. Delay in lodging of the FIR apparently, has been explained. So far other contentions raised by learned counsel for the applicant are concerned, the same require deeper appreciation of evidence which is not permissible at bail stage. Concession of pre-arrest bail cannot be allowed to the applicant / accused for the reason that learned advocate for the applicant / accused could not point out malafide on the part of the complainant party or local police. Concession of pre-arrest cannot be allowed to an accused person unless Court feels satisfied about the seriousness of accused

person`s assertion regarding his intended arrest being actuated by malafide. In this regard reference can be made to the case of Mukhtar Ahmad v. The State and others (2016 SCMR 2064).

In another case of RANA ABDUL KHALIQ v. The STATE (2019 SCMR 1129) the Honourable Supreme Court held as under:-

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner 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 in every run of the mill criminal case as it seriously hampers the course of investigation.”

8. In the present case, considerations of malafide, ulterior motive or abuse of process of law are conspicuously missing. Offence is punishable for death or imprisonment for life. No case for pre-arrest bail is made out. Accordingly, application for pre-arrest bail is dismissed. Interim pre-arrest bail already granted to the applicant is hereby recalled.

9. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

JUDGE

Tufail