

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Applications No. 1582 & 2389 of 2021

Applicant in : Aamir Khan s/o. Muhammad Arif, through
Cr. Bail No. 1582 of 2021 Mr. Raja Hasan Nawaz, advocate.

Applicants in : (1) Zohaib Hasan (2) Umair Hasan (3) Sohail
Cr. Bail No. 2389 of 2021 Hasan, all sons of Muhammad Fayaz and
(4) Muhammad Fayaz s/o Shafi, through
Mr. Khawaja Muhammad Azeem, advocate.

Respondent : The State, through Ms. Rahat Ahsan,
Addl. P. G.

Complainant : Muhammad Arbab s/o. Muhammad Bachal,
through Mr. Muhammad Munir Ahmed,
advocate

Date of hearing : 10.02.2022
Date of order : 10.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both bail applications as the same, being arisen out of F.I.R. No. 998/2021, registered at P.S. Gulistan-e-Johar under sections 147, 148, 337-A(i), 302, 504/34 P.P.C., have been heard by me together.

2. Applicant/accused Aamir Khan s/o. Muhammad Arif, through criminal bail application No. 1582 of 2021, seeks post-arrest bail in aforementioned crime. His earlier application for grant of same concession bearing No. 3821 of 2021 was dismissed by the learned IInd Additional Sessions Judge, Karachi- East vide order dated 12.08.2021. While the applicants/accused Zohaib Hasan, Umair Hasan, Sohail Hasan and Muhammad Fayaz, by means of criminal bail application No. 2389 of 2021, seek pre-arrest bail in aforementioned crime. Their earlier applications for grant of same relief bearing No. 3615 & 3868 of 2021 were dismissed by the learned IInd Additional Sessions Judge, Karachi-East vide order, dated

12.08.2021. Thereafter, they maintained Cr. Bail Application No. 1550 of 2021 before this Court which was dismissed for non-prosecution, vide order dated 16.12.2021. They were granted interim pre-arrest bail by this Court in the instant Cr. Bail Application vide order, dated 20.12.2021, and now the same is fixed for the confirmation of interim bail or otherwise.

3. Briefly stated, the facts of the case are that, on 08.07.2021, complainant Muhammad Arbab lodged the aforesaid F.I.R. alleging therein that, on 07.07.2021 at about 03:45 p.m. in Mohib Colony, Katchi Abadi, Block-9, Gulistan-e-Johar, accused persons, namely, Umair, Zubair (*Zohaib*) and others, who are neighbours of his brother Shah Nawaz, on the issue of main whole/gutter, quarreled and assaulted on Shah Nawaz, Nawaz, Azam and other with stones, dandas (*sticks*), etc., accused Umair caused iron rod blow on the head of his brother Shah Nawaz, who later on died in JPMC.

4. Heard, Record perused.

5. It appears that the applicants Aamir Khan, Sohail Hasan, and Muhammad Fayaz are not nominated in the F.I.R. They have been implicated in this case on the basis of statements of P.Ws Azam Ali, Muhammad Ali and Mst. Gulzar Bibi (*sons and widow of the deceased*), recorded under section 161, Cr.P.C., with allegations of scuffling and using filthy language; however, they have not assigned them any specific role for commission of offence in their statements. The complaint is not an eye-witness; he recorded the F.I.R. as per facts disclosed to him by his nephew P.W. Azam Ali. The name of applicant Zohaib Hasan is transpired as Zubair; however, he too has not been assigned any specific role for commission of offence in F.I.R. Hence, the guilt of the said applicants for the commission of any offence punishable with death or imprisonment for life

or imprisonment of ten years and/or of their vicarious liability with regard to the commonness of their intention for committing murder of the deceased under the circumstances will be determined at the trial. In the circumstances of the case mentioned above, I have found the case against the applicants **Aamir Khan, Zohaib Hasan, Sohail Hasan and Muhammad Fayaz** one of further inquiry as envisaged under sub-section (2) of Section 497, Cr. P.C.

6. So far the case of applicant Umair Hasan is concerned, he has been nominated in the F.I.R. with specific role of causing fatal iron rod blow on the head of the deceased.

7. It has been argued by the learned counsel for the said applicant that since no post-mortem of the deceased was conducted, it cannot be said with certainty that the deceased died to do inflicting of the said injury on him. He has also argued that as per chemical report, there is no blood stain on the iron rod, but on a danda recovered by the police from the spot and hence, his guilt also requires further inquiry. It appears that the family members of the deceased did not wish for post-mortem examination of the deceased's body; however, MLC of the deceased suggests causing of said injury on the head of the deceased. While the determination of weapon or instrument for causing death of deceased is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law. From the tentative assessment of the evidence in hands of prosecution, I am of the view that prima-facie sufficient evidence is available against the applicant **Umair Hasan** to connect him with the commission of alleged offence, carrying punishment for death and imprisonment for life. Every hypothetical question which could be imagined would not make it a case of

further enquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

8. As a result of above discussion, applicant **Aamir Khan s/o. Muhammad Arif** in criminal Bail Application No. 1582 of 2021 is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 1.00.000/- (*Rupees One Lac Only*) and P.R. Bond for like amount to the satisfaction of the trial Court. The interim pre-arrest bail granted to applicants *Zohaib Hasan, Sohail Hasan, both sons of Muhammad Fayaz and Muhammad Fayaz s/o Shafi* by this Court in Cr. Bail Application No. 2389 of 2021, vide order dated 20.12.2021, is confirmed on the same terms and conditions. While, interim pre-arrest bail granted to applicant *Umair Hasan son of Muhammad Fayaz* by this Court said vide order is hereby recalled by dismissing his Cr. Bail Application.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicants who have been admitted to post and pre-arrest bail try to misuse the concession of bail in any manner, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.

JUDGE