

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 387/2021.

Crl. Bail Application No.S-396 of 2021.

For hearing of bail application.

ORDER.

09-08-2021.

Mr. Qurban Ali Malano, Advocate for the applicants.

Mr. Shafi Muhammad Mahar, DPG for the State.

AMJAD ALI SAHITO J., By this single Order, I intend to dispose of captioned bail applications, through which applicants/accused Arbelo Malik and Gohram Malik seek pre-arrest bail in crime No. 51/2021, offence u/s 302, 337H(ii), 147, 148, 149 PPC registered at police station Adilpur. The separate bail applications were moved by the applicants for same relief, but the same were turned down by learned 1st Additional Sessions Judge, (MCTC) Ghotki vide order dated 21-06-2021 and 25-06-2021 respectively.

2. Brief facts of the prosecution case are that complainant Mst. Khanzadi Gadani lodged the FIR on 12-06-2021 alleging therein that on 10-06-2021 at about 0015 hours accused Gohram, Miandad, Shahnawaz Arbelo and two unidentified persons duly armed with Kalashnikovs and pistols entered in her house, where accused Miandad, Shahnawaz and one unidentified person made straight fires of Kalashnikov and pistol upon her son Umar and committed his murder and then they escapade away by making aerial firing in order to create harassment. Ultimately complainant appeared at police station and lodged the above said FIR.

3. Learned counsel for applicants submits that applicants are innocent and have falsely been implicated in this case with mala fide intentions and ulterior motives due to previous enmity, which is admitted by the complainant in the FIR; that mere presence of the applicants is shown in the FIR and no active role has been

assigned against them by the complainant; that there is delay of two days in lodging the FIR and such delay has not been explained by the complainant; that during investigation applicant/accused Arbelo Malik has been declared innocent; that after grant of interim pre-arrest, the applicants have joined the investigation and they have not misused the concession of interim pre-arrest bail, therefore, he pray for confirmation of interim pre-arrest bail.

4. Learned DPG for the State opposed for grant of pre-arrest bail. Despite service of notice, the complainant has failed to appear to contest the bail application.

5. I have heard learned counsel for applicant, learned DPG for the State so also have gone through the material available on record.

6. From the bare perusal of FIR, it appears that accused Miandad, Shahnawaz, Gohram, Arbelo and two unidentified accused duly armed with Kalashnikovs and pistols entered into the house of complainant, out of which accused namely Miandad, Shahnawaz and one identified accused straight away fired upon Umar son of complainant and committed his murder. It appears that mere presence of applicants/accused Gohram Malik and Arbelo Malik duly armed with weapons is shown by the complainant in the FIR and no any active role is assigned against them. Learned counsel for the applicants/accused pleaded malafide on the part of complainant that due to enmity both the applicants/accused have been implicated in this case. Moreover, during the investigation, applicant/accused Arbelo Malik has been declared as innocent. The FIR is delay for about two days and such delay has not been explained by the complainant. The investigation has been completed and applicants/accused are no more required for further investigation.

7. In view of above discussion, learned counsel for the applicants/accused has made out a good case for confirmation of bail in the light of sub section (2) of Section 497 CrPC, both the bail applications are allowed and the interim pre arrest bail already granted to the applicants/accused Arbelo Malik and Gohram Mali is confirmed on same terms and condition. Learned trial Court is at liberty to take action against the applicants/accused, if they misuse the concession of bail.

7. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE

Nasim/P.A