

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

Cr. B.A. No.S-515 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objection.
2. For hearing.

16.05.2022

Mr. Mushtaque Ahmed Rind, Advocate for the applicant.

Applicant is present on interim pre-arrest bail.

Ms. Rameshan Oad, A.P.G.

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SALAHUDDIN PANHWAR, J.-Through instant bail application, applicant Niaz seeks pre-arrest bail in crime No.03 of 2022, registered at Police Station Qasbo, under sections 381-A, 427 and 34 PPC. Earlier his bail plea was declined by the learned Additional Sessions Judge-I, Dadu, vide his order dated 26.03.2022.

2. Relevant facts of the case, are that applicant alongwith co-accused Munawar and Khadim Hussain duly armed with deadly weapons came at the land of complainant and committed theft of accessories of solar system, water pumping machine, inverter, pipes and other valuable articles lying/installed at the said land.

3. Learned counsel for applicant contends that applicant has falsely been implicated in the instant case; there is unexplained inordinate delay of 20 hours in lodging of the F.I.R; false implication of the applicant with due deliberation and consultation cannot be ruled out in the circumstances of the case; no incriminating article has been recovered from the applicant; that no specific role has been assigned to the applicant; there are general allegation; all prosecution witnesses are interested, hence there is no probability of tempering with their evidence.

4. Learned A.P.G opposed the application on the ground that applicant has committed the alleged offence; no malafide or ulterior motive regarding false implication of applicant either by police or by the complainant is shown; instant offence is against society, hence applicant is not entitled for pre-arrest bail.

5. Heard learned counsel for the applicant as well as the learned A.P.G and perused the record.

6. Admittedly, neither the stolen property was recovered from the possession of the applicant, nor the alleged deadly weapon was recovered from him. No specific role as to the commission of the alleged offence has been assigned to the applicant. It is yet to be determined at the time of trial whether the present applicant shared common intention with the co-accused in the commission of the alleged offence or not. Moreover, during investigation, the applicant was let off by the police; however, learned Magistrate while passing order on the report submitted by the police disagreed with such report and joined the applicant with trial of the case; hence trial Court has yet to decide the fate of the case. The applicant is attending trial Court regularly and there is no claim that he misused the concession of interim pre-arrest bail extended by this Court to him. There is delay of about 43 hours in lodgment of the FIR, which has not been explained by the prosecution satisfactorily; accordingly, malafide intention of the complainant with regard to deliberation of law as well as the facts cannot be ruled out. Learned counsel for the applicant has proved serious malafides as well as ulterior motive on the part of complainant party, which are basic requirements for the grant of pre-arrest bail. At bail stage only tentative assessment is to be made. Tentatively, the applicant has successfully made his case as of further inquiry as envisaged under sub-section (2) to section 497 Cr.P.C.

7. In view of what has been discussed above, the bail application is allowed and the interim pre-arrest bail earlier granted to the applicant by this Court vide

order dated 25.04.2022 is hereby confirmed on same terms and conditions. However, the applicant is directed to attend the trial Court regularly. If he fails to appear before it, the trial Court would be at liberty to take action against him in accordance with law without making any reference to this Court.

8. Needless to mention here 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

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