

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**  
Cr. Bail Appln. No.S- 300 of 2022.

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Date	Order with signature of Hon'ble Judge
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1. For orders on office objection.
2. For hearing of bail application.

**25.7.2022.**

Mr. Asif Ali Abdul Razak Soomro, advocate for the applicants, along with the applicants.

Mr. Ali Anwar Kandhro, Addl. P.G.

Complainant Muneer Ahmed, eye-witnesses Mohammad Heesab Buriro, Rajib Ali Buriro, and Mehrab Ali Buriro, father of deceased Mst. Naimat Khatoon *alias* Amroo are present in person.

**ORDER**

**ADNAL-UL-KARIM MEMON-J.** Through this bail application, applicants Ali Nawaz and Ali Akbar, both sons of Arbello Buriro, are seeking pre-arrest bail in F.I.R No.10 of 2021, registered with Police Station Mirpur Buriro, for the offences under Sections 302, 311, 34, PPC.

2. After registration of FIR, the investigation followed, and the applicants apprehending their arrest surrendered themselves before the concerned Court for seeking pre-arrest bail, where, initially they were granted interim pre-arrest bail, but later-on its confirmation was declined by the learned Sessions Judge, Jacobabad vide order dated 26.04.2022, on the analogy that they were/are involved in killing Mst.Naimat Khatoon *alias* Amro on the pretext of honor killing, which entails capital punishment.

3. Mr. Asif Ali Abdul Razak Soomro, learned Counsel for the applicants, contended that the applicants are innocent and have falsely been implicated in the present case due to enmity; that the story as narrated in the aforesaid crime seems to be concocted, managed, and engineered; that there is the inordinate delay of 22 hours in the lodgment of FIR, for which no plausible explanation has been furnished, which caused serious doubt about the genuineness of accusation against the applicants. Learned counsel further contended that the complainant Muneer Ahmed, eye-witnesses Mohammad Heesab and Rajib Ali, and Mehrab Ali, the father of the deceased, had sworn their affidavits before the learned Sessions Judge as well as before this Court, thereby exonerating the applicants/accused from the commission of the alleged offence and recording their no objection for grant of bail to the

applicants/accused. He emphasized that because of the affidavits filed by the complainant, eye-witnesses, and the father of the deceased, the applicants are entitled to the concession of pre-arrest bail in terms of Section 497(2) Cr.P.C. In support of his contentions, he relied upon the cases reported as *Amanullah Shah v. The State (PLD 1996 Supreme Court 241)*, *Muhammad Najeebv. The State (2009 SCMR 448)*, and *Muhammad Murad v. The State (PLD 2012 Sindh 42)* and an unreported order dated 07.6.2021 passed by this Court in Cr. Bail Application No.141/2021, and further argued that ingredients of alleged offences are yet to be determined in trial. He lastly prayed for allowing the instant bail application.

4. On the contrary, Mr. Ali Anwar Kandhro, learned Addl. P.G. opposed the grant of pre-arrest bail to the applicants because the applicants are nominated in the crime with the specific role of causing the murder of Mst. Naimat Khatoon *alias* Amroo; that the PWs have fully implicated them in their 161, Cr.P.C statements; that the medical evidence/postmortem report of deceased fully corroborates the ocular version; that empties were recovered from the place of incident; hence, the applicants are not entitled to extra-ordinary concession of pre-arrest bail.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. To go ahead on the subject, it appears from the perusal of the material placed on record that deceased Mst. Naimat Khatoon *alias* Amroo, was done to death in the house of the deceased and prima-facie allegations against the applicants are that they along with their accomplices killed her on the pretext of 'Karo-Kari' and 'Siyah-kari'. The specific role of causing the death of Mst.Naimat Khatoon *alias* Amroo has been ascribed to the applicants/accused. It further appears that the Police have recorded the statements of eye-witnesses under section 161, Cr.P.C. they have categorically nominated the applicants/accused in the commission of the offence. Even such mashirnamas of the place of incident as well as of the deadbody of the deceased were prepared by the police during the investigation. Prima-facie, the ocular as well as circumstantial evidence coupled with medical evidence available on the record, connect the applicants in the commission of the crime and the postmortem report prima-facie shows that deceased was done to death brutally with torture. The factum of filing of affidavits in favor of the applicants/accused, speaks about the contumacious conduct of the applicants/ accused, who have been found in a police investigation as an actual culprit of the murder of the deceased that they are making every effort to save their skin from the present case. The trend is that eye-witnesses take somersault and give statements that are different from the prosecution case and file affidavit at the stage of hearing of bail application to create doubt in the prosecution case to enable the accused to get the bail has been deprecated by the Honorable Supreme Court from time to time.

7. A five-member larger Bench of the Hon'ble Supreme Court once again examined the scope of Section 498, Cr.P.C. in Muhammad Ayub v. Muhammad Yaqub and another (PLD 1966 SC 1003). The majority held that Section 498 has two limitations: first, it applies only to accused persons and not to those convicted of an offence, and second, in non-bailable offences, it is confined to the category of persons visualized by Section 497. Under Sections 496 and 497 Cr.P.C the Court can bail out a person only if he has been placed under actual custody or appears in an answer to a process issued or is brought before the Court by the police or by some other arresting authority. On the other hand, Section 498 would be called in aid, before the Court of Sessions and the High Court, even where the Court is not directly, seized of the proceedings in question and where the arrest has not been made so far but anticipatory bail is asked for, e.g., where the case is still at the stage of investigation by the police or is pending in a subordinate Court. The power to grant such anticipatory bail would thus be confined to the High Court and the Court of Sessions and other Courts would be excluded from its scope.

8. From the above discourse, primarily, the pre-arrest bail is extraordinary relief and can be granted only in exceptional circumstances, if there is mala fide of the complainant and police in lodging the FIR. Prima facie, there is no mala fide of the complainant to lodge the FIR of the incident against the applicants. Involvement of the applicants in such a 'Karo-Kari' case, as discussed supra, disentitles them for extraordinary relief as provided under Section 498 Cr.P.C. Also, there is nothing placed on record by the applicants, which could show that the applicants have been falsely implicated in the aforesaid case by the complainant.

9. The findings of the learned trial Court while rejecting the bail plea of the applicants are that they are specifically nominated in the crime by the eye-witnesses to the effect that they killed the deceased on the pretext of 'Karo-Kari'. Prima-facie, this is dangerous trend, in the society, which needs to be curbed by the State institutions.

10. In view of the above facts and circumstances of the case leads to the tentative view that the applicants are not entitled to the extraordinary relief of pre-arrest bail. Resultantly, the ad-interim pre-arrest bail order dated 16.06.2022 passed by this Court, is hereby recalled.

11. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at the time of trial.

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