

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

Criminal Bail Application No.S-1127 of 2021
Criminal Bail Application No.S-166 of 2022

DATE ORDER WITH SIGNATURE OF JUDGE

12.08.2022

Syed Tariq Ahmed Shah advocate for applicants along with applicants on ad-interim pre-arrest bail.

Mr. Wali Muhammad Khoso, advocate along with complainant.

Ms. Sana Memon, Assistant Prosecution General.

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MUHAMMAD IQBAL KALHORO, J.- On fateful day i.e. 26.11.2021 at about 1300 hours applicants armed with fire arm weapons along with two co-accused Sher Muhammad and Ali Muhammad also armed with pistols waylaid complainant Maqbool Ahmed and his brother Altaf Ahmed in front of their house in Tando Qaiser Taluka and District Hyderabad and on account of previous enmity and a grudge over institution of the cases by the complainant party, they caused firearm injuries to Altaf Ahmed.

2. As per medical evidence, the injured sustained three injuries all assigned to applicants specifically. Their counsel pleading case for pre-arrest bail has stated that there is a long history of enmity between the parties; cases have been registered by them against each other; accused party had already registered a murder case against them bearing Crime No.86/2021 for killing their hari Sama Hajano and even in respect of the present incident a counter case was registered against the complainant party; there is discrepancy in the medical evidence, provisional medical certificate shows that injuries No.2 & 3 were abrasions received from hard and blunt weapon but in the final medical certificate the injuries are shown to have been caused by bullet / pallet which itself is contradictory; applicability of section 324 PPC is not without a question as there is no repetition of fire which in the backdrop of delay of two days in registering the case against the applicants makes the entire case to be of further inquiry and tainted with malice. Injured Altaf Ahmed himself is accused in the murder case and has not been attending the court. To support his arguments, learned counsel has relied upon 2021 SCMR 130, 2020 SCMR 971 and 2012 SCMR 887.

3. Such arguments have been rebutted by the learned counsel for complainant and learned Assistant Prosecution General accompanied by the complainant himself stating that in the murder case Crime No.86/2021 all the accused nominated by the applicants were exonerated by the police in investigation u/s 169 Cr.P.C and in fact the mother of the deceased moved an application against the applicants for causing murder of her son on which an investigation team has been constituted under the orders of DIG Police. The counter case has also been disposed of as false and the delay occurred due to fact that initially injured was taken to Karachi for treatment.

4. I have considered submissions of parties and perused material available on record including the case law. In FIR, applicants have been nominated specifically to be armed with pistol and a gun respectively and to have caused firearm injuries to Altaf Ahmed. This insinuation has been further confirmed by the investigating officer as he in report u/s 173 Cr.P.C. has referred the applicants to the court for a trial against such charge. The discrepancy pointed out by the learned defense counsel in medical certificate requires deeper appreciation of evidence and cannot be sorted out here in an application for pre-arrest bail. In fact, final medical certificate, prima facie, confirms injuries sustained by the victim. A long history of enmity, as pleaded in defence, goes against applicants in that it could be the motive of the incident. The relief of pre-arrest bail being extraordinary is rooted in equity and is extendable in the circumstances which show ostensible false implication of the accused in the case. This extraordinary relief is meant to protect the innocents from the rigor of arrest and the usual course of investigation which otherwise is required to be followed in law.

5. The prima facie evidence as discussed above does not make the applicants entitled to such extraordinary relief of pre-arrest bail. Consequently, bail applications in hand are dismissed and the orders whereby they were granted ad-interim pre-arrest bail are recalled.

6. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE