

that police officials tortured Muhammad Ramzan who lost his breath. Though investigation was carried out but same is silent with regard to place of death. According to I.O. after arrest, FIR was lodged against Muhammad Ramzan regarding theft committed in the Farm of Chaudhry Sohail (applicant/accused), after arrest Muhammad Ramzan suffered heart attack, he was shifted to Taluka Hospital Mirpur Bathoro, thereafter, he was handed over to his relatives for shifting him Karachi, hence, place of death could not be determined by the Investigation Officer. It is not disputed that Muhammad Ramzan was in custody of police official and he died within a short span of three hours. Besides, it is a matter of record that Muhammad Ramzan and his father are owners of 04 acres land, which is in possession of applicant/Chaudhry Sohail on lease, hence, young man was arrested without any FIR on the allegation of theft, made by the lessee applicant Sohail Akhtar and died within three hours.

3. Case of the applicants/accused is that there were no marks of violence over the body of deceased, who died due to heart attack and present case is the result of ulterior motive. Whereas, case of complainant is that young man died within three hours in the custody of police; police officials failed to rescue him by providing medical aid even they have denied that Muhammad Ramzan died in their custody when it is a matter of record that he was arrested without FIR when he was brought at Police Station where FIR was lodged alongwith *Mushirnama* of arrest.

4. Since, the applicants sought pre-arrest bail in a *murder charge* therefore, it is worth reminding for *all* that such *relief* in Criminal Administration of Justice is known as an '*extra ordinary relief*'. The use of '*extra ordinary*' itself is sufficient to *safely* include that such relief is not available in '*normal*' circumstances but only in '*exceptional*' circumstances. The existence of such '*exceptional circumstances*' shall be duty of the person (accused), seeking such '*extra ordinary relief*' which include co-existence of:

- a) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of Section 497 of Code of Criminal Procedure i.e unless he establishes the

existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

- b) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonour him;

so held in the case of 'Rana Muhammad Arshad v. Muhammad Rafique & another (PLD 2009 SC 427). It is also needful to add that demand of co-existence of above *two* was / is purposeful because preventing arrest of an accused clogs the very mechanics, ongoing or imminent investigation process, which may result far reaching consequences including that of loss or disappearance of evidence(s), therefore such relief would not be available to **every accused** but only those who establish co-existence of two ingredients. I am guided with the case of Ghulam Farooq Channa v. Special Judge ACE (Central-I), Karachi and another 2020 PLC SC 293 wherein purpose of allowing such an *extra ordinary relief*, with reference to non-bailable/cognizable offences *only*, has been detailed as:-

"4. Grant of bail to an accused required in a cognizable and non-bailable offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of Hidayat Ullah Khan v. The Crown (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigours of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, *prima facie* supported by material and evidence constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact, it is certainly not a substitute for post arrest bail.

5. While keeping in view the above settled-principles, I have examined the available material. I would also add that in the instant matter the applicants/accused are police officials who are charged in a murder case of Muhammad Ramzan who was a young man and died in three hours in the custody of police. Here, at this point, I find it

appropriate to add that police officials are *normally* believed to be conscious of law which includes right of the person, involved in a case (FIR/investigation) or against whom a complaint (non-cognizable matters) is filed or pending. This is the reason that acts and omissions of the police officials are to be examined with a different eye. I am unable to understand how the arrest on complaint of **theft** can be made without *first* recording the FIR of such **alleged theft** because the same (*theft*) is a cognizable offence and station-incharge has no discretion to avoid lodgment of FIR on information of commission of a cognizable offence. As per I.O of the case, the arrest of the deceased was made *first* and then the FIR of *theft* was recorded which, *itself*, is a strong circumstance against those, causing such arrest. This, however, is left open for consideration by the learned trial court.

6. Reverting to merits of the case it is, *prima facie*, evident that arrest without FIR is not denied; death in custody is not denied; arrest at the instance of Chaudhry Sohail Akhtar is also not denied, therefore, mere plea of non-availability of marks of violence is not sufficient to claim bail in a murder charge. The failure of the I.O in determining the cause of death appears to be for ulterior motive which, otherwise, was duty of the I.O. Even otherwise, such aspect *alone* shall not make a charge of *unnatural death* as natural death because while deciding the bail plea the material of the prosecution is to be given weight. I.Os tried to favour the police officials; allegation of theft on deceased, when admittedly his father was owner of 04 acres land, which was given on lease to Chaudhry Sohail Akhtar (applicant), is not appealable to a prudent mind. Further, there appears no *mala fide* on part of the complainant party in naming the applicants / accused which, per settled law, was / is obligation of the accused that there is such *mala fide*. Such failure alone is sufficient for disentitling an accused of cognizable / non-bailable for the **extra-ordinary relief**.

7. Under these circumstances, applicants/accused are not entitled to be extended extraordinary relief, hence, their bail applications are dismissed, however, the case of applicant Liaquat Ali Jokhio is

distinguishable from that of other applicants as allegation against Liaquat Ali Jochio is not connecting him directly, hence, his interim pre-arrest bail granted to the applicant Liquat Jochio is hereby confirmed on same terms and conditions. These are the reasons for the short order announced on 22.02.221.

Office to place copy this order in all connected matters.

JUDGE

Sajid