

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 1150 of 2018

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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1. For orders on MA No.7112/2018
2. For hearing of bail application.

25.02.2019

Syed Amir Ali Shah, Advocate a/w applicant.
Mr. Zahoor Shah, DPG for the State.
Mr. Haad Ali Panganwala, Advocate for complainant.

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Omar Sial, J. Applicant Muhammad Usman has sought pre-arrest bail in crime number 284 of 2018 registered under sections 457, 506-B and 34 P.P.C at the Preedy police station. Earlier, his pre-arrest bail application was dismissed by the learned 2nd Additional Sessions Judge, Karachi South on 15-8-2018.

2. The aforementioned F.I.R. was registered by Saad Abid on 11-6-2018. He stated that on 8-3-2018 pursuant to orders of the Sindh High Court, a team of the Sindh Building Control Authority came to demolish illegal construction in the parking area of a property owned by him. On 19-5-2018 when he was visited his property he saw that one Usman along with his brother Munawar and 3 to 4 other people were parking their motorcycles in the parking lot. There was an altercation between the parties over the parking issue and during the altercation Usman threatened the complainant that he will hit him with an iron rod.

3. I have heard the learned counsel for the applicant as well as the learned D.P.G who was assisted by the learned counsel for the complainant. My observations are as follows.

4. Prima facie it appears that the parties have a long lasting and still ongoing dispute over the ownership of a shop, which dispute has resulted in several different kinds of litigation and actions being taken by both parties against each other. A detail of these actions is contained in the impugned order. In these circumstances and at this stage malafide on the part of the complainant cannot be conclusively ruled out.

5. The investigating officer reported that none of the shopkeepers in the area had supported the complainant's version of the incident as contained in the F.I.R and he had recommended that the F.I.R be disposed of in A class however the learned magistrate did not agree with the recommendation on the ground that the complainant's driver had supported the complainant's version.

6. There is an unexplained delay of 23 days in the filing of the F.I.R. In this situation, deliberations and consultations and malafide and ulterior motives on the part of the complainant cannot be conclusively ruled out.

7. No theft of any item from the property allegedly owned by the complainant has taken place. Further, no evidence is on record to even prima facie show that the property in question is owned by the complainant. In these circumstances it will have to be proved at trial that an offence under section 457 P.P.C was made out. The offences with which the applicant is charged appear to fall within the non-prohibitory clause of section 497 Cr.P.C.

8. Above are the reasons for the short order dated 14.12.2018 which was as follows:

“For reasons to be recorded later on, ad-interim bail granted to the applicant is confirmed on the same terms.”

JUDGE