

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

Cr. Bail Application No.S- 590 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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24.11.2022.

Mr. Imtiaz Ali Channa, Advocate files his Vakalatnama on behalf of applicant alongwith applicant (on bail).

Mr. Imran Ahmed Abbasi, D.P.G for State.

ORDER

Muhammad Saleem Jessar, J.- At the very outset learned counsel for applicant submits the copy of case diary dated 12.11.2022 issued by 1st Civil Judge & Judicial Magistrate, Johi vide Criminal Case No.75/2022 (Re-The State v. Niaz Lund and others), taken on record.

2. Through instant application, applicant Khadim Hussain seeks his admission on pre-arrest bail in Crime No.03 of 2022 registered at P.S Qasbo under Sections 381-A, 427, 34 PPC.

3. After registration of case, police have submitted challan which is now pending for trial before the Court of 1st Civil Judge & Judicial Magistrate, Johi vide Criminal Case No.75/2022 (Re-The State v. Niaz Lund and others). Applicant preferred Criminal Bail Application No.360 of 2022 before the Court of Sessions, Dadu wherefrom it was assigned to Additional Sessions Judge-I, Dadu, who after hearing the parties, declined his request to grant pre-arrest bail vide his order dated 26.03.2022 and recalled the interim order dated 03.03.2022. Hence this bail application.

4. The facts of the case are already mentioned in FIR as well as in memo of bail application hence need not to be reiterated.

5. Learned counsel for applicant submits that co-accused Niaz Hussain Lund was also nominated under the FIR with identical role; however, during investigation he was let off by police and his name was kept under column No.2 of the challan; however, was arrayed as an

accused by Judicial Magistrate therefore, he filed Criminal Bail Application No.S-515/2022 before this Court which by means of order dated 16.05.2022 was allowed and he was granted pre-arrest bail. In support of his contention, learned counsel has placed on record a copy of said order dated 16.05.2022, taken on record. He therefore, submits that case of applicant is at par with co-accused who has already been extended concession of extra ordinary relief besides the accused has surrendered before the trial Court and has not misused the concession extended to him by this Court.

6. On the other hand, learned A.P.G appearing for State opposes the bail application on the ground that applicant is nominated under FIR therefore, does not deserve any leniency in shape of pre-arrest bail. He; however, could not controvert the fact that co-accused Niaz Hussain has already been extended same relief.

7. The complainant instead of notice has chosen to remain absent.

8. Heard. Record perused.

8. Admittedly, the FIR is delayed for about 20 hours for which no plausible explanation has been furnished by prosecution. Moreover, neither the stolen property was recovered from his possession nor the weapon has been produced by applicant. The case is being tried by the Court of Judicial Magistrate where after recording evidence if the prosecution may succeed to prove its charge against him even then the punishment of more than 03 years cannot be visualized. The co-accused having same role has already been extended ordinary relief and the case of applicant is at par with him therefore, propriety demands that applicant should also be extended same treatment. Accordingly and in view of above factual position, the case against applicant requires further inquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Instant bail application is therefore, allowed and the interim pre-arrest bail already granted to applicant on 13.05.2022 is hereby confirmed on same terms and conditions. However, applicant is directed to continue his appearance before the trial Court, without fail.

JUDGE

