

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1758 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application:

6th December, 2021

Mr. Muhammad Irfan, Advocate for applicants.

Mr. Muhammad Asif, Advocate a/w M/s. Muhammad Aslam Bhutta and Muhammad Zareef for complainant.

Mr. Abrar Ali Khichi, Addl.P.G. a/w SIP Bagh Ali, I.O.

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Omar Sial, J.: According to the information provided by Sadiq on 31-7-2021 at the Manghopir police station, his son Bahadur Ali was murdered by Abdul Ghani and his son Jan Sher (the two applicants in these proceedings). He recorded that at 8:30 p.m. the previous day when he was at home he heard the sound of gunshots. When he went out to see what had happened he discovered that a crowd had gathered outside. His son Peera Datta informed him that he (Peera Datta) along with Bahadur Ali, Makeen Bhatti, Mohammad Ashraf and Pervaiz were travelling in a Land Cruiser when a vehicle with four persons in it intercepted them. The two applicants along with two unidentified men emerged from it and opened fire on the Land Cruiser with the Kalashnikovs and pistols that they carried. Bahadur Ali was injured in the firing and later succumbed to his injuries. F.I.R. No. 761 of 2021 was registered under sections 302, 427 and 34 P.P.C. against the two applicants and two unidentified persons. The two applicants sought pre-arrest bail before the learned 12th Additional Sessions Judge, Karachi West who after hearing the parties dismissed their application on 8-9-2021.

2. I have heard the learned counsels for the applicants and the complainant as well as the learned Additional Prosecutor General. For the sake of brevity their respective arguments are not being re-produced but are reflected in my observations and findings below.

3. Peera Datta, Makeen Bhatti, Muhammad Ashraf, Yaqoob and Pervaiz all claim to be passengers of the Land Cruiser which was fired upon by the applicants. Out of these witnesses Ashraf, Yaqoob and Pervaiz have recorded their section 161 Cr.P.C. statements. It has been brought to my attention though

that two of the said eye witnesses i.e. Yaqoob and Pervaiz recorded their statements 25 days after the incident whereas the date on the statement of Ashraf is not clear. Further, upon a tentative assessment the statement recorded by Ashraf appears to be an unnatural account. I have restrained myself from giving further observations in this regard. The investigation officer when asked as to the reason for the delay as all these witnesses were easily reachable, he replied that he had tried on a number of occasions to reach them for recording their statements but that the complainant had declined to locate them for this purpose. The investigating officer was further of the view that though he recorded what he was told by these witnesses, according to his experience he believed that the witnesses had been tutored when the complainant himself brought them for recording their statements. The delay in recording the statements for no ostensible reason (nor did the learned counsel for the complainant provide one), has the impact of creating doubt at this stage. The value of such delayed statements will have to be determined at trial in light of the principles enunciated by the Honorable Supreme Court. There are prosecution witnesses who have prima facie not supported the complainant's story but the learned counsel for the complainant was of the view that their statements should not be taken into consideration as they were all planted witnesses.

4. The learned counsel was unable to provide a cogent reason as to the presence of the eye witnesses that day in a Land Cruiser. He agreed that the profile of the witnesses (all being labourers or drivers) was not such that would own a Land Cruiser and that prima facie they had no linkage with Fahad Raees but attempted to justify this aspect by stating that one Fahad Raees owned the Land Cruiser and that all these witnesses were using it for a joy ride. Though I find the reason difficult to believe at this stage, it is an admitted position that neither has Fahad Raees to date joined the investigation and to the contrary cannot be located by the investigating officer. The investigating officer of the case when reprimanded, submitted that on a number of occasions he has tried to reach Fahad Raees but that his gunmen prevent the investigating officer from doing so. I am saddened to hear that the State is unable to establish its writ. The concerned S.S.P. is directed to look into this matter and provide the requisite manpower and equipment to the investigating officer in this regard.

5. It is the prosecution case that 20 to 59 (depending on who is asked) bullets from different weapons were fired in the shoot-out by the applicants, yet, it appears that the Land Cruiser has not been damaged. The investigating officer to a query of the court said that the vehicle could not be examined as Fahad Raees declined to have the same examined and to date has not produced it. He did however give some photos which showed a couple of bullet holes at best on a vehicle.

6. The memo of inspection of injuries shows the deceased having sustained one bullet wound to his leg. This memo does not reconcile with the ocular version. There is a medical report issued by the Abbasi Shaheed Hospital on 30.7.2021 which reflects that the deceased had three bullet injuries. Apart from one in the knee (which was also noted in the memo of inspection of injuries) the remaining two injuries show blackening at the wound of entry, suggesting a fire from close range. Prima facie this finding is not getting support from the witness statements. The complainant declined to have a post mortem conducted and the death certificate that is on record upon a tentative assessment is not confidence inspiring.

7. It is an admitted position that Fahad Raees and applicant Abdul Ghani have an ongoing animosity over a tract of land and that this animosity has led to the initiation of legal proceedings in the past. Malafide on the part of the complainant (ostensibly a front man of Fahad Raees) cannot be ruled out at this stage. Upon a tentative assessment it appears that an integral player in this episode is Fahad Raees and that the so called eye witnesses have acted merely as pawns.

8. For the aforementioned reasons I am of the view that the nexus of the applicants with the crime they are charged for requires further inquiry. The pre-arrest bail granted to them earlier stands confirmed however subject to their furnishing solvent sureties in the sum of Rs. 500,000 each and P.R. Bonds in the like amount to the satisfaction of the learned trial court. The surety furnished by them earlier may be adjusted against the new surety. The applicants are further directed to co-operate fully with the investigation officer and in the event they do not, the investigating officer should seek the cancellation of their bails immediately.

JUDGE