

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-57 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

28.04.2023.

Syed Tariq Ahmed Shah advocate for the applicant.
Applicant is present on ad-interim pre-arrest bail.
Ms. Sana Memon, Assistant Prosecutor General, Sindh.
Mr. Inam Ali Malik advocate for the complainant.
Complainant is present in person.

O R D E R

MUHAMMAD IQBAL KALHORO, J:- An alleged incident of murder of two brothers of the complainant, namely Ashraf Joyo and Ali Ghulam Joyo, took place on 09.07.2022 at 19:30 hours at Quba Bus Stop, situated on the road from Hyderabad to Mirpurkhas. The incident was reported to police on 10.07.2022 at about 18:00 hours. As per story in FIR, four accused, riding on two motorcycles, accosted brothers of complainant, who were also riding a motorcycle and, on account of previous enmity, spread them with bullets fired from Kalashnikovs. The applicant was riding one of the motorcycles, and co-accused Ali Hassan, armed with a Kalashnikov, was sitting behind him, who had fired on deceased Ashraf Joyo killing him at the spot.

Learned counsel in defence has argued that there is an unexplained delay of about 23 hours in registration of FIR. There is enmity between the parties; therefore, false implication of the applicant on account of malafide and ulterior motives cannot be ruled out. Co-accused Ali Hyder Joyo, who is assigned similar role of driving the other motorcycle, and Ghulam Qadir, who has been assigned role of firing at the other deceased, have been granted bail on the basis of statement of injured Nanji Kolhi, who was injured at the spot from firing of the accused, in which he has stated that there was only one motorcycle driven by the present applicant. Learned counsel submits that in view of such statement, the case has become of two versions, and which version is correct is yet to be determined.

He has relied upon 2022 SCMR 663 and 2021 SCMR 1295 in support of his arguments.

His arguments have been rebutted by learned counsel for the complainant and learned Assistant PG. The latter has stated that in this case, two investigations were carried out and in both of them appellant has been found involved. The subsequent investigation was done by a DSP, who too has been able to identify the role of the applicant as a facilitator. And further the applicant did not join the investigation.

I have considered submissions of the parties and perused material available on record. In FIR and 161 CrPC statements of witnesses, applicant is shown to be driving the motorcycle along with co-accused Ali Hassan, who had targeted deceased Ashraf causing his death at the spot. And after the incident, he i.e. appellant drove him away. In both the investigations, the applicant has been identified with such role: he facilitated the main accused in escaping from place of incident. In all the statements, including the statement of injured Nanji, who is an independent person, presence of the applicant at the spot is established. Therefore, the rule of consistency is not applicable because the very injured witness has denied presence of co-accused Ghulam Hyder and Ghulam Qadir. And prima facie, on the basis of such statement, the authenticity of which is yet to be determined in the trial in any case, co-accused have been granted bail. But be that as it may, the relief granted to co-accused is not of any help to the present applicant, as his is a different case in that his specific role has been confirmed in the investigation, whereas theirs i.e. co-accused was not.

Learned trial Court, in the impugned order, has observed that the applicant had failed to join investigation and applied for bail only after the bail was granted to co-accused Ghulam Hyder and Ghulam Qadir. His conduct was a testament of his intention to avoid process of law. Not only did he fail to join the investigation, but he applied for bail after realizing that he had a chance of getting similar relief extended to co-accused.

The ground of delay at this stage, deciding entitlement of the applicant to pre-arrest bail, is immaterial, for delay per se would not make him entitled to concession of pre-arrest bail, an extra-ordinary

relief. Even otherwise, as per learned APG, the incident was reported to the police within time, and such entry was kept, and letters were given to the complainant for post-mortem. Old enmity, taken as a ground in defence, is a double-edged weapon, and cuts both ways. At this stage, when sufficient material is available, which establishes presence of applicant at the spot with specific role where two persons were done to death by the co-accused who was driven away by him, the old enmity between parties cannot be considered in his favor entitling him to the extra-ordinary concession of pre-arrest bail. Accordingly, the bail application is dismissed, and ad-interim pre-arrest bail granted to him vide order dated 18.01.2023 is hereby recalled.

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

J U D G E

Irfan Ali