

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-198 of 2023

Applicants : Lutuf Ali and Mehtab Ali though they are on interim pre-arrest bail, but called **absent**. Their counsel is also absent.

Respondent : The State through Mr. Imran Ali Abbasi, Assistant Prosecutor General, Sindh

Complainant : Azamuddin s/o Muhammad Hassan Jamali, through Mr. Niaz Hussain Rahu, Advocate.

Date of hearing : **02-05-2023**

Date of Order : **02-05-2023**

O R D E R

AMJAD ALI SAHITO, J:- Through instant bail application, the applicants/accused Lutuf Ali and Mehtab seek their pre-arrest bail in Crime No.35 of 2022, for offence under sections 302, 337-H(ii), 34 P.P.C, registered at P.S. Khadhar District Shaheed Benazirabad, after their bail pleas were declined by the learned Additional Sessions Judge-VI, Sakrand vide his order dated 30.12.2022.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Record reflects that instant bail application was presented on 28.02.2023 and on same day, the applicants/accused were granted interim pre-arrest bail and matter adjourned to 20.3.2023 for confirmation or otherwise. On 20.3.2023, learned counsel for complainant filed power which was taken on record and matter was adjourned to 27.3.2023 and the I.O. was directed to appear along with relevant record on 10.4.2023 but I.O. was called absent on said date and matter was adjourned to 27.04.2023 when both applicants/accused were present and in their presence this matter was adjourned for today. Applicants/accused and their counsel Mr. Badal Gahoti are called absent and no intimation is received.

4. At this juncture, learned counsel for the complainant submits that the accused are playing with the Court as after grant of pre-arrest bail,

they failed to appear before this Court and subsequently, their bail application was dismissed for non-prosecution. From the perusal of record, it reflects that after conducting the investigation, the report under section 173 Cr.P.C. (challan) was submitted before the concerned Magistrate and the applicants/accused were shown as absconders. Before that, they had filed a pre-arrest bail application before the learned trial Court, same was also dismissed and finally they appeared before this Court and filed Criminal Bail Application No.S-1354/2022. On 13.12.2022, the applicants/accused were admitted to protective bail for seven days and who after furnishing solvent surety appeared before the Investigating Officer. The I.O. released both the accused persons under section 169 Cr.P.C. and placed their names in column No.2 of the challan. However, learned Magistrate has not agreed with the report filed by the I.O. and has taken cognizance against all the accused persons including present applicants/accused Lutuf Ali and Mehtab Ali. When both the accused persons were joined as accused, thereafter they filed pre-arrest Bail Application before the learned trial Court and after dismissal of the same, they preferred pre-arrest Bail Application bearing No.S-22 of 2023 before this Court and after grant of bail, they misused the concession of bail, therefore, their Bail Application was dismissed in non-prosecution vide order dated 27.02.2023. Again, the applicants/accused filed instant bail application and on 28.02.2023, they were admitted to interim pre-arrest bail and bail matter was adjourned for confirmation or otherwise. Today, learned counsel for the applicants/accused called absent. Learned counsel for the complainant also pointed that the accused are the persons who are playing with this Court as they after dismissal of their bail pleas, again filing pre-arrest bail applications, as such, they are on bail and enjoying since December 2022.

5. I have gone through the bail application and contentions raised in the bail application that applicants/accused have falsely been implicated by complainant and only allegation is of one fire against each of applicants/accused upon deceased but per FIR five injuries were shown while in the postmortem there appears 13 injuries which at the most ought to have not been more than ten so also there appear contradiction about the duration of time in postmortem and one disclosed by complainant in FIR. Lastly prayed in the bail application for grant of pre-arrest bail.

6. On the other hand learned counsel for complainant as well as learned A.P.G. Sindh both vehemently opposed the grant of bail to applicants/accused.

7. I have heard the parties present in Court, and have gone through the available record.

8. From perusal of record it reflects that names applicants/accused appear in the FIR with specific role that applicant/accused Lutuf Ali made straight fire upon deceased Abdul Naveed whereas applicant/accused Mehtab also made fire from his which hit on his thigh. Learned counsel for complainant submits that applicants/accused declared deceased Abdul Naveed as 'Karo' while 'Kari' is still alive. The ocular evidence finds support with the medical evidence. The PWs in their statements recorded under section 161 Cr.P.C supported the version of the complainant. It is worthwhile to note that the principles of grant of pre-arrest bail and post-arrest bail are totally different. In the matters of pre-arrest bail, the Courts are supposed to examine as to whether the accused has proved *mala fide* on the part of complainant or prosecution or his false implication in the case, which is basic ingredient for grant of pre-arrest bail. In the instant case, the applicants have failed to show any *mala fide* on the part of complainant. No ill will or enmity has been pleaded by the applicants/accused. At bail stage, only tentative assessment is to be made. Prosecution has, *prima facie*, furnished sufficient material to connect the applicants with the commission of the alleged offence and PWs have supported the prosecution version. In such circumstances, while taking the guidelines from the case of 'Amir Faraz Vs. The State' reported in 2023 SCMR 308, the applicants/accused have failed to make out the case for confirmation of their interim pre-arrest bail. Accordingly, applicants/accused do not deserve for concession of pre-arrest bail, as such, instant pre-arrest bail application is **dismissed** and the interim pre-arrest already granted to the applicants/accused by this Court vide order dated 28.02.2023 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE