

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-226 of 2023

Applicant: Akhtar Ali Jamali @ Akhtar Hussain son of Ali Murad Khan Jamali @ Ali Murad, through Mr. Aijaz Ali Lakho, Advocate.

Complainant: Ghulam Ali son of Deen Muhammad, through Mr. Ashfaqe Ahmed A. Solangi, Advocate.

Respondent: The State through Ms. Rameshan, Assistant Prosecutor General, Sindh.

Date of hearing: **10.04.2023**
Date of Order: **10.04.2023**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant criminal bail application, the applicant/accused above named seek his pre-arrest bail in Crime No.13 of 2022, under sections 302, 148, 149, 114 and 404 P.P.C, registered at P.S Gaji Shah District Dadu, after his bail plea was declined by the learned Additional Sessions Judge-I/MCTC, Dadu vide order dated 28.02.2023.

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

3. Per learned counsel for the applicant though the name of applicant / accused appeared in the FIR but after registration of the FIR the applicant / accused was arrested and subsequently during course of investigation it was found that the accused was not present at the place of incident in fact this offence was committed by three accused persons namely Ghulam Qadir, Qasim and Ashraf have committed offence; that due to previous enmity the entire family has been roped by the complainant; that after the arrest of the accused he was released by DSP Siraj Ahmed Lashari who was also investigating officer of the case under section 169 Cr.P.C and during his arrest nothing was recovered from the possession of applicant / accused; that five I.Os conducted the investigation out of which two has exonerated him from the commission of offence whereas one I.O has implicated the present applicant / accused; that last I.O has not collected any cogent evidence to connect the applicant / accused with the commission of offence. Lastly, he prayed for confirmation of interim pre-arrest bail as the challan has been submitted and the applicant / accused is not more required for further investigation.

4. On the other hand, learned counsel for complainant as well as Assistant Prosecutor General, Sindh vehemently opposed for confirmation of interim pre-arrest bail on the ground that name of applicant / accused transpires in the FIR with specific role that he has fired upon the deceased; however, they admit that there is previously murderous enmity between the parties.

5. I have heard learned counsel for the respective parties and gone through the material available on the record.

6. Admittedly, there is murderous enmity between the parties as such FIR being Crime No.49 of 2022 under section 302 PPC was lodged against the deceased and complainant party. After registration of the FIR investigation as conducted and as per learned counsel for the applicant five investigating officers investigated the matter and out of which two investigating officers have exonerated applicant / accused, as such, he was released under section 169

Cr.P.C. Per learned counsel accused remained in custody of police for five days but no recovery effected from applicant / accused. Furthermore, during course of investigation other witnesses' evidence was also recorded in the instant case and they submitted that accused was on the way to his duty. It is settled principle of law that for grant of pre-arrest bail there must be malafide on the part of complainant or police officer; in the instant case the complainant has not approached before the competent Court of law with clean hands as previously there was murderous enmity between the parties and he has implicated entire family in this case; though as per police report the absconding accused after committing crime taken away the motorcycle of the deceased. There is no allegation of misusing concession of interim pre-arrest bail by the applicant as he is attending the Trial Court regularly. At bail stage only tentative assessment is to be made, therefore, learned counsel for the applicant is made out a case for confirmation of interim pre-arrest bail. Resultantly bail application is allowed and ad-interim pre-arrest bail earlier granted to the applicant vide order dated 10.03.2023 is confirmed on the same terms and conditions.

7. Needless to mention here that the observations made hereinabove are tentative in nature would not prejudice the case of either party at trial.

*Muhammad Danish**

JUDGE