

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Bail Application No.S- **633** of 2023
(*Abid Hussain s/o Ashique Hussain Arain v. The State*)

Crl. Bail Application No.S- **634** of 2023
(*Muhammad Younis Arain v. The State*)

Date of hearing	Order with signature of Judge.
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- 1.For orders on office objections.
- 2.For Hearing of Bail Application

23-10-2023

Mr. Iftikhar Ali Arain, Advocate along with both applicants.
Syed Mujahid Ali Shah, Advocate along with complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

ORDER

MUHAMMAD IQBAL KALHORU, J.- Complainant has alleged that applicant/accused Abid Hussain Arain was annoyed with him on account of exchange of hot words. Hence on 28.07.2023 at about 1730 hours, he barged into his house along with nine other accused, duly armed with deadly weapons. Applicant Abid Hussain Arain, as soon as came in the house, abused the complainant and fired from his rifle at him, but the same hit his nephew Sajjad Ali, aged about 8/9 years, who fell down on the ground and died. Thereafter, co-accused Abid Hussain s/o Ghulam Rasool Arain fired from his pistol on Muhammad Ali, son of the complainant. As a result, he was critically injured. When neighbourers, hearing the fire shots, arrived at the place of incident, all the accused made their escape good.

2. Learned counsel for the applicants has argued that enmity is admitted in the FIR and the applicants have been falsely implicated in this case; no evidence has been collected in the investigation and the CDR shows that applicant Abid Hussain was in Kasur-Punjab at the time of incident.

3. Complainant's counsel has opposed the bail to the applicants so also learned Additional P.G.

4. I have gone through the relevant papers and considered the arguments of parties. Both the applicants are nominated in FIR. The place of incident is inside the house of complainant, where due to fire made by applicant Abid Hussain, nephew of complainant, namely, Sajjad Ali aged about 8/9 years died. In FIR, applicant Muhammad Younis Arain is shown to be armed with a pistol and in company of the main accused. His presence along with co-accused inside the house of complainant is sufficient evidence, *prima facie*, to show common intention he was sharing with main accused to commit the alleged offence which carries capital punishment. In the investigation, also applicants have been found guilty by the I.O and have been referred to the Court for the purpose of a trial. The Challan shows that after registration of FIR, applicants had obtained pre-arrest bail and had only replied questions in the investigation, but apparently they did not produce the crime weapons, which has in fact, *prima facie*, compromised merits of the case to some extent. Complainant's counsel has also informed that applicant Abid Hussain Arain is a habitual criminal as so many FIRs including two FIRs under Section 302 PPC stand registered against him.

5. Be that as it may, applicant Abid Hussain Arain is *prima facie* directly assigned the role of murdering deceased Sajjad Ali and applicant Muhammad Younis committing house trespass of complainant's house, duly armed with a pistol, *prima facie*, appears to share common intention with him. These allegations are further supported by 161 CrPC statements and medical evidence. Therefore, both the applicants are not entitled to the extraordinary concession of pre-arrest bail, which is only meant to save innocent persons from the arrest in non-bailable offences, otherwise requirement of law. Whereas, in the present case, there is reasonable material, as discussed above, against the applicants pointing out to their involvement in the alleged offence. Accordingly, both bail applications are **dismissed** and

the orders granting interim pre-arrest bail to the applicants by this Court are recalled.

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

These bail applications are **disposed of** accordingly. *Office to place a signed copy of this order in captioned connected matter.*

JUDGE

Ahmad