

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.S-58 of 2022

(Abdul Hameed Panhwr & others Mirbahar Vs. The State)

1. For Orders on office objection.
2. For hearing of Bail Application

04-12-2023.

M/s Qurban Ali Malano and Israr Ahmed Shah, advocate for the applicants.

Mr. Abdul Baqi Jan Kakar advocate for the complainant.

Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

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Irshad Ali Shah, J;- It is alleged that the applicants who are police officials with rest of the culprits after having formed an unlawful assembly in prosecution of its common object committed murder of Muhib Ali and Noor Din by causing them fire shot injuries and then gave it cover of police encounter and lodged such report with PS Abran. Subsequently FIR of the present case was lodged by complainant Hakim Ali.

2. The applicants on having been involved in present case sought for Pre-Arrest bail by filing such application, it was dismissed by learned Ist Additional Sessions Judge, Naushahro Feroze, now they have sought for the same from this Court by way of instant Crl. Bail Application u/s 498-A Cr.P.C.

3. It is contended by learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant; the deceased were hardened criminals of the area and they have died during course of an encounter with the police party consisting of the applicants and others; for that a separate FIR has been lodged with PS Abran; the FIR of the present case is second in series on same cause and it has been lodged by complainant Hakim Ali on the basis of judicial inquiry which was ordered by learned Sessions Judge, Naushahro Feroze,

who was having no authority to have ordered so and he was also having a personal grudge with the applicants; no investigation of the case has been conducted by Joint Investigation Team, which was constituted under the orders of the high-ups of the police; the FIR of the present incident is lodged with considerable delay; the applicants have joined the trial and there is no allegation of misusing the concession of interim pre arrest bail on their part; therefore, they are entitled to be admitted to pre arrest bail on point of further inquiry and malafide. In support of their contention, they relied upon the cases of *Salman Khan Vs. The State* (2022 SCMR 515), *Rana Muhammad Imran Nasrullah Vs. The State and others* (2022 SCMR 1946) and *Javed Iqbal Vs. The State* (2022 SCMR 1424).

4. It is contended by learned DPG for the State and learned counsel for the complainant that the applicants are neither innocent nor have been involved in this case falsely; they have misused their authority by killing two young persons, who were never convicted in any criminal case and then in order to save themselves from legal consequences, they gave it cover of an encounter with the police and lodged such FIR, which has been recommended to be cancelled as false under "B" class by DSP Complaint Cell, Sukkur Range. By contending so, they sought for dismissal of instant Crl. Bail Application. In support of their contention, they relied upon case of *Muhammad Arshad and another Vs. The State and another* (1996 SCMR 74).

5. Heard arguments and perused the record.

6. It is an admitted fact that an FIR was lodged by the applicant Abdul Hameed with PS Abran alleging therein that he with rest of the police officials while performing lawful duty undertook an encounter whereby Muhib Ali and Noor Din lost their lives by sustaining fire shot injuries;

such FIR on investigation apparently has been recommended by the police to be cancelled as false under "B" class with submission of report u/s 173 Cr.P.C against the applicants by DSP Complaint Cell, Sukkur Range, on FIR lodged by complainant Hakim Ali, which prima-facie suggest he involvement of the applicants in commission of the incident; such investigation was conducted under the orders of DIGP Shaheed Benazirabad, Range; therefore, there was hardly a need for conducting further investigation of the case through Joint Investigation Team. The delay in lodgment of the FIR by complainant Hakim Ali was natural, same even otherwise could not be resolved by this Court at this Stage. As such, it would be premature to say that the applicants being innocent have been involved in this case falsely at the instance of complainant party. The FIR with regard to police encounter as said above has already been recommended by the police to be cancelled as false under "B" class; therefore, the FIR of the present case could not be declared to be illegal by making a premature conclusion that it is the second in series on same cause. The applicants could not be admitted to pre arrest bail under the pretext that learned Sessions Judge Naushahro Feroze was having no authority to have ordered registration of FIR against them on the basis of inquiry report furnished by learned IIIrd Judicial Magistrate, Naushahro Feroze, which apparently was permissible in terms of section 22 A/B Cr.P.C, such act hardly constitute an act of malafide to benefit the applicants. The applicants might have joined the trial and there may not be any allegation of misusing the concession of interim pre arrest bail on their part but such fact alone is not enough to admit them to pre arrest bail in case like present one, ignoring highhandedness on their part, whereby two

innocent person have lost their lives. The deeper appreciation of facts and circumstances even otherwise is not permissible at bail stage. There appear reasonable grounds to believe that the applicants are guilty of the offence with which they are charged and no case for grant of pre arrest bail to them is made out on point of further inquiry or malafide.

7. The case law which is relied upon by learned counsel for the applicants is on distinguishable facts and circumstances. In case of Salman Khan (*Supra*) it was concluded that offence u/s 302 PPC did not appear to have been made out, consequently, the accused was admitted to bail. In the instant case prima-facie an offence u/s 302 PPC against the applicants is made out. In case of Rana Muhammad Imran Nasrullah (*Supra*) the parties were disputed on plot and all penal sections applied in case were bailable excepting offence punishable u/s 506/2 PPC and 440 PPC. In the instant case there is no dispute between the parties over the plot and it is murder case. In case of Javed Iqbal (*Supra*), the parties entered into house of complainant to settle a civil dispute; therefore, it was concluded that possibility of false implication of the accused to gain benefit in civil litigation could not be ruled out; it was not a murder case. In the instant matter, there is no civil dispute between the parties and it is murder case.

8. Consequent upon above discussion, the instant bail application is dismissed.

Judge