

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
 CrI. Bail Application No.S-778 of 2023
 (Mumtaz Ali *Panhwr Vs. The State*)

1. For Orders on office objection.
2. For Orders on MA No. 6662/2023.
3. For hearing of Bail Application.

15-01-2024.

Mr. Safdar Ali Jogi, advocate for the applicant.
 Mr. Muhammad Hanif Maitlo, 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 applicant with rest of the culprits in furtherance of their common intention committed murder of Abdul Rasheed a boy aged about 04 years and then went away by making aerial firing to create harassment, for that the present case was registered.

2. The applicant, on having been refused pre-arrest bail by learned Ist Additional Sessions Judge/(MCTC), Khairpur, has sought for the same from this Court by way of instant CrI. Bail Application u/s 498-A Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant, who is his brother, in order to satisfy with him his dispute over property; the FIR of the incident has been lodged with delay of about 01 day and on investigation the applicant has been found to be innocent by the police; therefore, he is entitled to be admitted to pre arrest bail on point of further inquiry and malafide. In support of his contention he relied upon cases of *Saad Zia Vs. The State and another (2023 SCMR 1898)* and *Fahad Hussain and another Vs. State (2023 SCMR 364)*.

4. Learned DPG for the State and learned counsel for the complainant have opposed to grant of pre-arrest bail to the applicant by contending that he is neither innocent nor is involved in this case falsely by the complainant and he was let off by the police on the basis of dishonest investigation.

5. Heard arguments and perused the record.

6. The applicant is named in FIR with specific allegation that he committed murder of the deceased by causing him fire shot injury. In that situation it would be premature to say that he being innocent has been involved in this case falsely by the complainant party only to satisfy with him, his dispute over the property. The substitution of real culprit with innocent one in case like the present is rare phenomenon. The delay in lodgment of the FIR was natural and same has been explained in FIR itself; same even otherwise could not be resolved by this Court at this stage. On investigation, the applicant was let off by the police by accepting his plea of alibi by rejecting the version of the complainant and his witnesses; it was unjustified conclusion on the party of investigating officer and was rightly turned down by the learned Magistrate having jurisdiction by taking the cognizance of offence against the applicant; such order even otherwise has been maintained by this Court on having been challenged by the applicant. There appear reasonable grounds to believe that the applicant is guilty of the offence with which he is charged and no case for grant of pre-arrest bail to him on point of further inquiry or malafide is made out.

7. The case law, which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstance. In case of Saad Zia (*supra*) the accused was admitted to post arrest bail mainly for the reason that there was counter version of the incident. In the instant matter, the applicant is seeking pre-arrest and there is no counter version of the incident. In case of Fahad Hussain (*supra*) the accused was admitted to bail mainly for the reason that actual cause of the death of the deceased could not be determined even by Medical Board. In the instant matter the cause of the death of the deceased is determined. He died of fire shot injury which was caused to him by the applicant.

8. In view of above, the instant bail application is dismissed together with listed application.

Judge

Nasim/P.A.