

ORDER-SHEET
**IN THE HIGH COURT OF SINDH CIRCUIT
COURT HYDERABAD**

Criminal Bail Application No.S-1035 of 2023

09.10.2023

Mr. Khuda Bux @ K.B. Laghari, advocate for applicant along with applicant, who is present on interim pre-arrest bail.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Complainant present in person.

ORDER

ZULFIQAR ALI SANGI, J:- This order will dispose of instant pre-arrest bail application filed on behalf of the applicant namely, Muhammad Hussain s/o Gul Muhammad Khaskheli, who is facing trial in Crime No.224/2022 of PS C.P. Naseem Nagar, Hyderabad, registered under sections 302, 34 PPC. Earlier, bail plea of the applicant/accused was turned down by learned VIII-Additional Sessions Judge, Hyderabad vide his order dated 18.07.2023.

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

3. Learned counsel for the applicant has contended that the applicant/accused is innocent and has falsely been implicated in this case; that there is delay of one day in lodgement of FIR and the same was registered after deliberation and consultation with mala fide intentions though the complainant was informed on same day of incident; that the witnesses were examined after delay of seven days of the registration of FIR no such delay was explained; that the entry in respect of information given to police is not disclosed; that actually the incident is un-witnessed and story has been managed by the complainant party; that as per prosecution story, co-accused Anees was cutting throat of deceased Mst.

Zubeda and not by the present applicant/accused Muhammad Hussain and only present applicant/accused has been booked with the allegation that he was standing with empty handed and thrown the dead body of Mst. Zubeda; that it is yet to be determined after recording the evidence of prosecution witnesses as to the allegation against the applicant/accused that he has shared the common intention with co-accused in the commission of offence or not. Lastly, he prayed for confirmation of interim pre-arrest bail to the applicant/accused.

4. On the other hand, Complainant present in person states that he being poor person cannot engage a private counsel; however, he has full faith upon learned A.P.G. Sindh, who will argue the case. Learned A.P.G. Sindh has contended that the applicant has been nominated in the FIR and he was available for facilitating the main accused for committing offence. She has next contended that ample evidence was collected during investigation against the applicant/accused which connects him with the commission of offence; therefore, he is not entitled for extraordinary relief of pre-arrest bail.

5. Heard arguments of learned counsel and examined the entire material available on the record with their able assistance.

6. Admittedly, there is delay in registration of FIR for one day. The statement under section 161 Cr.P.C. of the complainant and witnesses were also recorded after delay of seven days. The complainant is not eye witness of the incident. He was informed in respect of the incident on the same day even then he lodged FIR after completing all formalities including burial of deceased. As per FIR, the main role is assigned to co-accused Anees for committing murder of Mst. Zubeda and not upon the applicant/accused. Only role upon applicant/accused is assigned that he was standing with main accused. FIR also shows that one Mst. Huzooran was sleeping with the deceased Mst. Zubeda on a roof as per her statement co-accused Anees was cutting throat of deceased Mst. Zubeda and applicant/accused pushed Mst.Huzooran, who fell down upon co-accused Anees; however, nothing is available on record as to whether she sustained any injury or not. Statement under section

161 Cr.P.C. of Mst. Huzooran was also recorded on 04.09.2023, which *prima facie*, creates doubt.

7. In the case of '*Qurban Ali v. The State and others*' (2017 SCMR 279), whereby the Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of instigation. In such circumstances, it is the trial Court to determine, after recording pro and contra evidence, whether the applicant/accused was vicariously liable for the acts of co-accused. In the present case, no overt act is attributed upon the applicant/accused. In another case of '*Mumtaz Hussain and 5 others v. The State* (1996 SCMR 1125), the bail was granted to accused on the ground that despite being allegedly armed with deadly weapons has not used in the commission of offence. In the instant case, the applicant/accused has been shown empty handed only standing on the place of incident without playing physical part in the commission of murder offence. The learned counsel for the applicant/accused has pleaded *mala fide* on the part of complainant. The investigation is completed and the applicant/accused is no more required for further investigation.

8. In view of the above, the applicant/accused has established his case for confirmation of interim pre-arrest bail. Consequently, instant criminal bail application is **allowed** and interim pre-arrest bail already granted to the applicant/accused vide order dated 18.09.2023 is hereby confirmed on the same terms and conditions.

9. The observations made hereinabove are tentative in nature and will not prejudice the case of either party.

JUDGE