

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.**

Cr. Bail Appl. No.1852 of 2024

14.11.2024

Mr. Aamir Mansoob Qureshi, advocate for applicants

Mr. Mukesh Kumar, advocate for complainant.

Mr. Saleem Akhtar Buriro, Addl. P.G.

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ORDER

MUHAMMAD IQBAL KALHORO J: Applicants Mst. Irum Naz and Sikander Javed are seeking pre arrest bail in Crime No.267/2024 U/s 302,34 PPC of P.S. New Town, Karachi. Applicants are present on ad-interim pre arrest bail granted to them vide order dated 16.08.2024 and today matter is fixed for confirmation or otherwise.

2. As per FIR, relations between sister of complainant namely Farah with applicant Sikander, her husband, were strained on account of alleged bad habits of applicant Sikander: drinking and womanization. On 21.07.2024, a quarrel took place between them over the same issue, information of which, the sister of complainant communicated to her parents, who thereupon went to the house of applicants, where allegedly a dispute took place between applicant Sikander and father of complainant, in the course of which applicant Sikander pointed a gun to him resulting in some scuffle between them. Such information was conveyed to police on 15 police helpline which also reached there. Complainant also came to know of such facts, hence he went to the house of applicants and brought his parents, his sister and her 7 month's daughter Noor Fatima to the house and left for reporting such matter to police station but was informed by his brother Hamza on phone that his father and his niece Noor Fatima, who were injured in the quarrel had suddenly gone unconscious in the house, whom he took to Jamal Noor Hospital and from there to Agha Khan Hospital but they were pronounced dead. Hence FIR.

3. Learned defence counsel has argued that applicants are innocent and have been falsely implicated in this case; that screen shots of CCTV footage show that deceased had left the house of applicants in conscious and sound condition, and that he had gone to his house alongwith

minor Noor Fatima by driving his own car; that a different version of the incident given by the complainant has been recorded after three days of the incident viz. 24.07.2024 in which he has revealed that he was communicated information of the dispute and act of the applicant Sikadner, who had pointed a pistol to his father, hence he went there but found his father and minor Noor Fatima had already left and his sister alongwith her mother sitting on a coach in the lobby; that after 19 days of the incident on 10.08.2024, another statement of complainant was recorded in which for the first time he disclosed that applicant Sikander gave a blow on the back side of head of his father with ashtray and that during the scuffle minor Noor Fatima was injured as her face had hit the door; that applicant Sikander has also registered a direct complaint against complainant party stating that a false case has been registered against him and his mother, which direct complaint has been admitted.

4. According to him, the case has become a case of different versions, neither in the first version allegation of causing a blow to head of deceased by applicant with ashtray has been alleged, nor in the second version of the complainant recorded on 24.07.2024; that postmortem of the deceased show the time between injury and death as 10/15 minutes which in view of the fact that deceased had left the house of applicants in sound and conscious condition would mean that he had received injury in his own house. According to him, there is delay of more than 22 hours in registration of FIR, hence the case against applicants is a case of further inquiry; that in this case the guards of the building where the incident took place have also been examined and none has supported version of the complainant and each one has confirmed the fact that deceased had left the house of applicants not in an injured condition; that in the investigation mother of the applicant Sikander namely Mst. Erum Naz was let off by the police, which submitted Challan u/s 316 PPC but the Magistrate converted the said offence into an offence u/s 302 PPC and took cognizance of the offence against applicants. However, his order has been challenged before this court. Learned Counsel in support of his arguments has relied upon

2022 SCMR 1168, 2011 P Cr. L J 1244, 2012 P Cr. L J 1601, 2017 SCMR 1932, 2023 SCMR 330, 2024 SCMR 14, 205, 476, 2016 SCMR 18.

5. On the other hand, complainant's counsel and learned Addl. P.G. have opposed bail to the applicants.

6. I have considered submissions of the parties and perused material available on record. The FIR has been registered by a brother of Mst. Farah, who is the eyewitness and in whose presence the incident had taken place. The complainant is not the eyewitness but has narrated the incident in the FIR as disclosed to him on phone. The statement of Mst. Farah and her mother Mst. Rozina, who both were present at the time of incident are, therefore, consequential insofar as prima facie case against the applicants is concerned. Both the witnesses in their 161 Cr.P.C statements have alleged that during the course of dispute when deceased Zubair, father in law of applicant Sikander tried to make him understand the situation, he started beating him on his chest, dragged him inside the room, took out a pistol and pointed it to him and when Mst. Farah called neighbors to intervene and save her father, he put down the pistol but gave a blow on his head with ashtray made up of glass.

7. No doubt these statements have been recorded on third day of the incident but delay per se would not be considered fatal to the prosecution case for making a tentative assessment of material on an application which has been filed for grant of pre arrest bail, a concession extra ordinary in nature and meant only to save innocent persons from arrest and humiliation in a criminal case in which they have been falsely implicated. More so, the effect of any delay in 161 Cr.P.C. statements requires deeper appreciation of evidence, can be undertaken only in the trial. The other witnesses like P.W. Bilawal, a watchman, has also prima facie supported the prosecution case by disclosing that when deceased Zubair returned to his house, his granddaughter was in his lap and he was bleeding. The postmortem also suggests that deceased died of a head injury, which as per version of the eyewitnesses was caused to him by the applicant Sikander. These pieces of evidence prima facie show unnatural death of deceased by injury on his head, which from the

statements of P.Ws appear to have been caused to him during the scuffle by applicant Sikander. CCTV footage and the fact whether or not in CCTV footage injury of the victim is visible would also be examined in the trial as apparently the internal injury and internal bleeding in the first instance as a result of head blow cannot be ruled out. However, against his mother applicant Mst. Erum Naz, there is no specific allegation leveled by the P.Ws. More so, she was let off by the police during investigation as no reasonable material connecting her in the offence was found against her.

8. In view of above facts and circumstances, I do not find applicant Sikander entitled to pre arrest bail. His bail application is dismissed and order whereby he was granted ad-interim pre arrest bail is recalled. However, ad-interim pre arrest bail granted to applicant Mst. Erum Naz is confirmed on the same terms and conditions, whereby she was granted ad-interim pre arrest bail.

The observations made herein above are tentative in nature and would not prejudice case of either party at trial.

The Cr. Bail Application is disposed of.

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