

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Bail Appl. No. S- 1094 of 2014
Cr. B.A. No. S- 1229 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
29.2.2016	

Mr. Muhammad Akbar Mughal, Advocate for applicants
Mr. Manzoor Hussain Subohpoto, Advocate for complainant
Mr. Shahid Shaikh, APG.

MUHAMMAD IQBAL KALHORO, J. - By this common order, these two bail applications filed under Section 498 Cr.P.C. arising out of Crime No. 92 of 2014 registered at police station Daulatpur on 12.09.2014 under Section 302, 324, 337-A(ii), H(ii), 147, 148, 149, 506(2) PPC are disposed of.

2. The allegation against applicant Namazuddin is that he while being armed with rifle made straight fire on deceased Qurban on his chest; as a result of which he died at the spot, whereas the allegations against the applicant Allah Jurio, Asadullah, Muhammad Juman, Muhammad Akram, Ghulam Murtaza, Nasrullah and Muhammad Hakim in Cr. B.A. No. S- 1229 of 2014 are that they were armed with weapons and caused injuries to the P.Ws. From perusal of FIR it is obvious that in the alleged incident one person lost his life, whereas seven persons were injured.

3. Applicant Namazuddin after registration of FIR filed application under Section 398 Cr.P.C. before the trial court for seeking pre-arrest bail but since notice was issued to the otherside without granting him ad-interim pre-arrest bail, therefore, he apprehending his arrest on the next date of hearing has filed the instant application, whereas pre-arrest bail of the applicants Allah Jurio and others in Cr. B.A. No. 1229 of 2014 was dismissed by the trial court vide order dated 11.11.2014.

4. Learned counsel for the applicant has argued that there is delay of 5.40 hours in registration of FIR which is not explained by the complainant. He has further stated that on the day of incident viz. 12.9.2014 applicant Namazuddin was admitted in civil hospital Mirpurkhas and though such certificate was

produced before the I.O but he took no action to get it verified. He has further stated that there is a counter case registered by the accused party of the same incident, as such it is yet to be seen which party is aggressor and which one is aggressed upon. According to him, the FIR does not disclose true account of the incident as the injuries sustained by the accused party have been suppressed therein by the complainant party hence it cannot be attached any sanctity. Explaining the point further he has stated that the FIR cannot be treated as a substantive piece of evidence and when it is apparent that the story contained in the FIR calls for further inquiry; the benefit whereof has to be extended to the accused / applicants even at bail stage not as a matter of grace but as a right. He has also argued that the enmity between the parties is admitted which is borne out of the contents of the FIR and in view of such enmity the false implication of the applicants cannot be ruled out. He has emphasized that there are contradictions in the ocular account and the medical evidence which makes the case against the applicants as one of further inquiry.

5. On the other hand Mr. Manzoor Hussain Subohpoto, counsel for complainant has argued that specific role of causing firearm injury is attributed to applicant Namazuddin and the other accused who are applicants in Cr. B.A. No. S- 1229 of 2014 are also attributed specific role of causing injuries to the P.ws. He urges that extra ordinary concession of pre-arrest bail can only be granted to the accused when it is established that their implication in the case is malafide or influenced by some ulterior motives. He states that the common intention of the accused to commit murder can be gathered from the place of incident which is shop of the complainant where all the accused duly armed with weapons had arrived and committed the offence. Regarding plea of alibi of applicant Namazuddin learned counsel states that a fact finding inquiry to verify veracity of the medical certificate was conducted by the Taluka Health Officer who has concluded that the said certificate showing admission of applicant Namazuddin in the hospital is false and fabricated. Learned counsel through statement has placed on record Photostat copy of such inquiry report.

6. Learned APG has opposed the grant of bail to the applicants. His argument is that plea of alibi cannot be looked into at bail stage as it is simply a defence plea which the applicants can take in the trial. Hr further states that applicant Namazuddin is assigned very specific role of causing murder of

deceased for which other applicants are also equally responsible as their being armed with deadly weapons and arriving at the place of incident is sufficient proof whereof.

7. I have considered the arguments and have perused the record. The contents of FIR show that the place of incident is 4/5 kms away from the police station where the FIR was registered. The complainant has stated that after the incident he initially after obtaining letter from the police took the injured to the hospital and then appeared at the police station and got the FIR registered. In my view, the delay in registration of FIR in view of explanation of the complainant and keeping in view the distance between the police station and place of incident is fully and properly accounted for. Even otherwise delay *per se* is no ground to extend concession of pre-arrest bail to the applicants. The applicant Namazuddin has been assigned specific role of causing murder of deceased by firing on him and his plea of alibi from the fact finding inquiry has been found false and fabricated. Even otherwise, I am of the view that while deciding these bail applications, this court cannot deeply determine the merits of such plea of alibi. As per settled principle of law only prima facie material has to be taken into consideration to decide prima facie guilt of the accused. From the facts, role of applicant Namazuddin causing murder of deceased is prima facie established. The other P.Ws in their statements have also supported the version of the F.I.R viz a viz role of the applicant Nizamuddin. The medical evidence is also in conformity with the allegations leveled against him. He is not able to show his implication in the FIR is influenced by any *mala fide* or ulterior motives. However, the case of applicants Allah Jurio and others in Cr. B.A. No. S- 1229 of 2014 is on different footings. The injuries they allegedly caused to the P.Ws have been opined by the medical officer as bailable. Admittedly they have not caused any injury to the deceased. Therefore, sharing of common intention on their part with applicant Namazuddin is a question of further inquiry. And it is yet to be established in the trial whether they had come duly armed with alleged weapons at the place of incident or not. In view of the foregoing reasons, I would like to confirm the bail of applicant Allah Jurio and others in Cr. B.A. No. S- 1229 of 2014 on the same terms and conditions contained in the order dated 17.11.2014, whereby they were granted ad-interim bail; however, the bail application of applicant Namazuddin is dismissed.

8. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

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