

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

Criminal Bail Application No.S-1047 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
	For orders on office objection. For hearing of main case.

07-11-2022

Mr. Wali Muhammad Khoso advocate for applicant along with applicant along with Mr. Maqbool Ahmed Nizamani advocate.

Mr. Nazar Muhammad Memon A.P.G. Sindh.

MUHAMMAD IQBAL KALHORO, J:- Police of Police Station A-Section, Tando Allahyar after receipt of information that several people having consumed wine manually prepared by applicant and co-accused Qaim Magsi at their wine klin had fallen ill and were admitted in Civil Hospital Hyderabad reached there. One of them Muhammad Yaqoob resident of Tando Allahyar narrated the whole story of purchasing such wine from applicant and co-accused. Complainant, who is Sub-Inspector Police, further came to know that at least five persons had lost their lives after consuming the said wine, their relatives, however, down trodden, and fearing for their lives and backlash from police, buried their dear ones without postmortem. But, one of the deceased namely Nizam's post mortem was conducted and as per learned A.P.G., it has been confirmed that he died after consumption of poisonous liquor. On the basis of such information complainant has registered instant FIR against the applicant and other co-accused.

2. Learned defense counsel has submitted that of the same incident another FIR No.03/2022 at PS Tando Jam has been registered by the police and in view of dictum laid down by the Hon'ble Supreme court in the case reported as "*Mst. SUGRAN BIBI v. The STATE*" [PLD 2018 Supreme Court 595], the second FIR is incompetent; in the first FIR the applicant and co-accused have been granted bail and this case is founded on the same facts and circumstances. There is absolutely no evidence against the applicant either medical or documentary and whole case is based on mere hearsay evidence. There are contradiction in first FIR and second FIR, to the benefit of which applicant is entitled. Some of the witnesses have executed affidavits in support of the applicant. He has relied upon the cases reported in 2011 SCMR 1612, PLD 2018 Supreme Court 585, 2020 SCMR 451, 2022 SCMR 515, 2022 SCMR 624 and 2022 SCMR 1271.

3. On the other hand, learned A.P.G. Sindh has opposed bail citing the fact that applicant has remained absconder, never joined investigation, a pre-requisite for an accused who claims pre-arrest bail on the ground of malafide.

4. I have considered submissions of the parties and perused material available including case law relied upon in defense. Insofar issue of second FIR is concerned, in my humble view, the same cannot be looked into while deciding an application for pre-arrest bail in which, more than merits, presence of malafide or otherwise on the part of the complainant or police is to be weighed. In the present case police on the basis of information came to know about death of several persons and notably these persons are not the same persons regarding the death of which the first FIR was registered. Therefore, there is no issue of second FIR in respect of death noted in this FIR to boot. There is no malafide on the part of the police to book the applicant in the present case, either against whom as per learned A.P.G. so many FIRs of identical nature are already registered. The learned A.P.G. has further confirmed that many PWs have supported the prosecution case against the applicant. No doubt some of the PWs have sworn affidavits in favour of the applicant but practice of filing affidavit at bail stage in favour of accused has been deprecated by the Hon'ble Supreme Court in the past with the directions that the bail applications are to be decided on the basis of tentative assessment of material available on record and not on the basis of affidavits. Besides, applicant failed to join investigation and preferred to remain absconder in the investigation. He has evaded requirement of law and therefore, is not entitled to the concession of pre-arrest bail.

5. The arguments led in defense require deeper appreciation of evidence and entail a detailed enquiry cannot be undertaken at this stage. The concession of pre-arrest is extraordinary in nature, which is meant only to save innocent persons from rigor of arrest in a non-bailable offence, which is otherwise a requirement of law. Finding no case for such relief in favour of applicant, this application is dismissed and applicant's ad-interim pre-arrest bail granted to him vide order dated 06.10.2022 is hereby recalled.

6. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE