

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

Criminal Bail Application No.S-834 of 2021.

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For orders on office objections.

For hearing of main case.

26.11.2021.

Mr. Atta Hussain Gaddi Pathan advocate for the applicant.

Mr. Nazar Muhammad Memon, Additional Prosecutor General.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Applicant who is not present today and according to his counsel is admitted in hospital is seeking pre-arrest bail in FIR No.37/2016, registered at P.S. Site Hyderabad under Sections 302, 34 PPC which reveals that complainant Waheed-ur-Rehman, who is brother of deceased Shafi-ur-Rehman has reported that his deceased brother had contracted marriage with a relative Mst. Kainat who had come from Lahore to reside with them. This infuriated her relatives and they issued threats to them to return Mst. Kainat otherwise they will face consequences. On 12.08.2016 complainant received information on phone from another brother that deceased had received bullet injuries and was taken to civil hospital Hyderabad where he went and found his brother injured who told him that father of Kainat namely Gul Muhammad and her uncle Noor Muhammad (applicant) who were on a motorcycle waylaid him when he was on Rickshaw and applicant had fired at him from a pistol. He later on died on the same day and then FIR was registered on the next day.

Learned defence counsel submits that applicant has been falsely implicated in this case; there is no record of dying declaration; post mortem report shows that applicant had died immediately in emergency ward therefore there is no chance of dying declaration and while deciding pre-arrest bail application not only malafide but merits of the case are to be taken into account. He has relied upon case law reported as 2021 SCMR 130, 2016 P.Cr.L.J. Note 90 and 2014 MLD 280.

On the other hand, learned counsel for the complainant has chosen to remain absent whereas learned APG has opposed bail on the ground that

the applicant is nominated in the FIR with specific role of killing the deceased.

I have considered submissions of parties and perused material available on record including case law relied upon by learned defence counsel. This FIR was registered on 13.08.2016 and Challan was submitted on 24.09.2016. Applicant was shown absconder therefore the proceedings under Section 87 and 88 Cr.P.C. started, but he concealed himself and could not be arrested and declared proclaimed offender. This fact coupled with fact that he has been assigned a direct role of firing over deceased, which deceased himself disclosed to the complainant, cannot be ignored while deciding his entitlement to pre-arrest bail. The argument that he has been falsely been implicated in this case in presence of above evidence is prima facie not sustainable. The argument that applicant had died in emergency ward and therefore there was no chance of him making a dying declaration is also misconceived. The post-mortem report shows that the time between injury and his death is about three hours, meaning thereby he was alive for three hours and chance of his making a dying declaration and disclosing name of the real culprit to have fired upon him cannot be ruled out. There is otherwise no malafide on the part of complainant to substitute the real culprit with a fake one in murder of his own brother. I therefore, do not find the applicant entitled for extra ordinary concession of pre-arrest bail which is only meant to save innocent persons from trumped up charges leveled malafide against him by the complainant party. Accordingly, this bail application is dismissed and ad-interim pre-arrest bail granted to the applicant vide order 23.09.2021 is hereby recalled.

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

**JUDGE**

Irfan Ali