

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

Criminal Bail Application No.S-865 of 2021.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.

For hearing of main case.

01.11.2021.

Mr. Imamuddin Otho advocate for the applicant.

Mr. Manzoor Ahmed Panhwar advocate for the complainant.

Ms. Sobia Bhatti, Assistant Prosecutor General, Sindh.

Applicant is present on ad-interim pre-arrest bail.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Complainant's son namely Allah Bachayo aged about 28 years went missing on 08.09.2020 after he left home to bring grass for animals. Applicant tried to locate him but in vain. On next date 09.09.2020, he again started looking for his son and found his dead body in a small watercourse in the land of Haji Ghulam Hussain Shoro at about 10 am. He reported the matter to police on the same day at about 2000 hours showing suspicion against accused Inayat, Nisar Ahmed and Muhammad Ashraf. On next date viz. 10.09.2020 PW Ali Hassan who allegedly was passing by place of incident on the relevant day met complainant and disclosed a complete narration of the incident. He named applicant alongwith other accused holding deceased by his arms and legs and beating him with lathies. According to him he tried to intervene but was held back by the accused on force and threats. He went to home and fell-ill, next day he came to know of murder of his son and came to tell him entire facts, who then appeared at P.S. on the same day viz. 10.09.2020 and narrated the entire story to the police.

Learned defence counsel has submitted that applicant is innocent and his name does not appear in the FIR; no role has been assigned to him; he has been implicated in this case on the basis of further statement which is unreliable on account of delay of two days. In support of his contentions he has relied upon 2005 YLR 2459, 2005 YLR 1793 and 2016 P.Cr.L.J. Note 85.

Learned counsel for complainant and learned APG have opposed bail to the applicant and have submitted that there is no ill-will of the complainant against the applicant as he has not nominated him in FIR, and only afterwards when he came to know of his active role he immediately

reported the matter to the police against him; applicant's bail was rejected by learned Sessions Judge Tando Muhammad Khan on 30.11.2020 and thereafter he went underground for almost 10 months, and surfaced on 30.09.2021 when he filed present bail application; during his abscondence he threatened the complainant to withdraw his name from the case which he duly reported vide FIR No.85/2020 against him.

I have heard learned counsel for the parties and perused the material available on record alongwith case law. Applicant's name does not appear in FIR which shows that there is no malafide or ill-will on the part of complainant to implicate him in the case. Incident is un-seen, son of complainant went missing on 08.09.2020 and on the next day when his dead body was found in a small watercourse having marks of violence, he reported the matter to the police. Since then, two investigations have been carried out and in both the investigations the applicant has been found involved. PW Ali Hassan in his statement under Section 161 Cr.P.C. has assigned him specific role of causing lathi blows to the deceased. His narration is supported by post-mortem report which reveals multiple bruises on the body of deceased and drowned. A person of 28 years with good health cannot normally die of drowning in a small watercourse unless force is applied. Marks of violence on his body prima facie support such presumption that he was subjected to violence. Applicant has history of threatening the complainant which is duly recorded in an FIR. His such conduct cannot be ignored while deciding his entitlement to extra ordinary relief of pre-arrest bail.

In view of such facts and circumstances, I am of the view that applicant is not entitled to the concession of pre-arrest bail, meant only for accused who has been falsely implicated in case and which is perceivable from record. Here as discussed above it is not the case. Accordingly, this bail application is dismissed and ad-interim pre-arrest bail granted to the applicant vide order 30.09.2021 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