

**THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Bail Application No.S-383 of 2023.  
Criminal Bail Application No.S-398 of 2023.  
Criminal Bail Application No.S-411 of 2023.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on office objections.  
For hearing of main case.

29.05.2023.

Mr. Muhammad Sachal R. Awan, Mr. Mumtaz Sachal Awan  
and Mr. Muhammad Iqbal Kassar advocates for applicants.

Mian Taj Muhammad Keerio and Mr. Peral Majeedano  
advocates for complainant.

Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Applicants in Crl. Bail Application No.S-383/2023 and Crl.  
Bail Application No.S-398 of 2023 are present on ad-  
interim pre-arrest bail.

**ORDER**

MUHAMMAD IQBAL KALHORO, J:- These are three bail applications  
arising out of same Crime No.09/2023, registered at PS Kaloi, u/s,  
among others, 302 PPC. Criminal Bail Application No.S-411/2023 is  
for post-arrest bail whereas remaining two bail applications are filed  
for seeking pre-arrest bail.

In FIR dated 02.03.2023 two incidents are reported, one  
occurred at about 0600 hours on 28.02.2023 when complainant  
party was present over the lands, over which there is a dispute  
between the parties, when applicant Ashraf along with three other  
accused duly named armed with firearms and hatchets arrived and  
after committing rioting/ disturbance started aerial firing in which  
their own man namely Raja was murdered. Yet they kept on making  
aerial firing. The second incident took place at about 1130 hours on  
the same day in which accused Abdul Razzaq, Daim, Abdul Wahid,  
Abdul Sattar, Abdul Aziz and 5/6 unknown accused participated.  
Applicant Abdul Wahid has been alleged to have instigated the  
accused to commit murder of the complainant party. Upon which  
accused Abdul Razzaq armed with a Rifle fired upon Abdullah killing

him at the spot, whereas accused Daim fired from Rifle injuring Sanaullah alias Rahim Dino who subsequently, on the next day, died.

Learned defence counsel have argued that applicants have been implicated out of enmity. No active role is assigned to them. Accused party had registered FIR bearing Crime No.08/2023 against the complainant party before the present FIR for murder of Raja and injuring at least four witnesses including Ashraf who was then taken to hospital for treatment and in fact was not present at the time of second incident in which two persons of complainant party were allegedly killed. There is enmity between the parties and since no active role has been assigned, therefore, their case requires further inquiry. More so malafide on the part of complainant implicating as many as 10 accused in one FIR registered after two days of incident cannot be ruled out. They have relied upon the case of *Dur Muhammad versus The State* (2001 PCrLJ 1707) in support of their arguments.

Their arguments have been questioned by counsel for complainant and learned APG on the ground that their names are mentioned in FIR. They are shown to be armed with weapons and section 147, 148 PPC in view of prima facie evidence of common object shared by each accused is very much attracted. They have relied upon the case of *Rana Muhammad Arshad versus Muhammad Rafique and another* (PLD 2009 SC 427) in support of their arguments.

I have considered submission of the parties and perused material available on record. Presence of applicant Muhammad Ashraf, armed with a hatchet, is shown by the complainant in the first incident occurring in the morning at 0600 hours. It is alleged, that accused came and made aerial firing in which from firing of the accused accompanying Muhammad Ashraf, their own man namely Raja was killed. In the second incident which happened after 11.30 a.m. on the said date, applicant Muhammad Ashraf's presence is not shown. Insofar as first version, charging applicant Muhammad Ashraf in the case, in view of Crime No.08/2023, disclosing attack upon the accused party by the complainant party in which one Raja was murdered and atleast four PWs including Muhammad Ashraf was injured, requires further inquiry. He was not present at the time when second incident took place in which two persons of complainant party lost their lives, therefore, his sharing common object and complicity

with the main accused, who have been assigned specific role, is a question which can only be determined after recording of evidence.

Against other applicants no active role has been alleged in FIR either. Applicant Roshan Ali and Gulsher are shown in the first incident, hence, their case is identical to the case of Muhammad Ashraf. However, the remaining applicants are shown to be present in the occurrence which took place later on, but none of them, although alleged to be armed with weapons, has been assigned role of firing at the deceased. Abdul Wahid himself armed with a Repeater is assigned the role of instigation but not using the weapon by him despite having a chance to do so, makes his case one of further inquiry. His complicity and sharing common intention, therefore, cannot be determined at this stage unless relevant evidence is recorded. Apart from above, in the context of no active role assigned to the applicants, it would not be irrelevant to say that there are counter cases between the parties. The case registered by accused is earlier to the case registered by the complainant party. Both the FIRs flow from same incident, from one side one person has been killed and from other side two persons have been killed. The question of aggressor and aggressed upon is yet to be determined also. And on account of admitted enmity between the parties, throwing of wider net by complainant with malafide intentions for implicating as many accused as possible cannot be ruled out either. I am therefore of the view that applicants have been able to make out a case for bail.

Accordingly, the bail applications No.383 and 398 of 2023 are allowed and ad-interim pre-arrest bail granted to applicants vide order dated 19.04.2023 and 27.04.2023 are hereby confirmed on the same terms and conditions. Similarly, the bail application No.411/2023 is also allowed and the applicants are granted post-arrest bail subject to their furnishing a solvent surety in the sum of Rs.200,000/- (two lac rupees) each and P.R Bond in the like amount to the satisfaction of learned trial Court.

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

**JUDGE**