

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Present: **Mr. Justice Mohammad Karim Khan Agha**

Cr. Bail Appln. No. 67 of 2016

Oshaque Ali

V

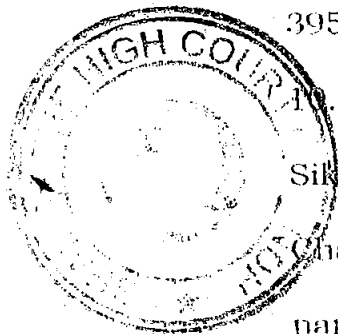
The State

Date of hearing	20-02-2017
Date of Order	24.02.2017
Applicant	Through Mr. Abdul Karim Chang, advocate.
Complainant	Through Mr. Mansoor Ahmed Shaikh, advocate
Respondent	State through Mr. Zulifqar Ali Jatoi, D.P.G

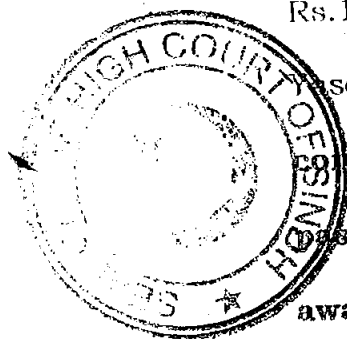
**ORDER**

**Mohammad Karim Khan Agha, J:** - By this order, I propose to dispose of this pre-arrest bail application No.67 of 2016, which has been filed by the applicant (Oshaque Ali) who was granted ad interim pre arrest bail by this Court vide order dated 26-01-2016.

2. Brief facts of the case as per FIR are that the complainant namely Abdul Fattah son of Abdul Qadir Chang lodged FIR 85/2015 U/S 395, 506/2, 337 (H)(II), 149 PPC at P.S Bhiria City, Naushehro Feroze on 10.12.2015 at 1345 hours (the F.I.R) alleging therein that the accused Sikandar Chang, **Oshaque Ali Chang (the applicant)** and Himath Ali Chang had committed the murder of the brother of the complainant namely Muhammad Ayoob Chang, for which the complainant had earlier lodged F.I.R bearing Crime No.111 of 2014 u/s 302, 504 and 34 PPC at P.S Faiz Ganj against accused persons (**including the applicant**) (the 1<sup>st</sup>



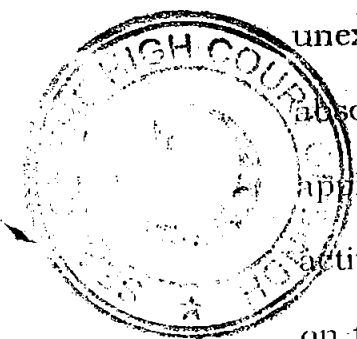
F.I.R) and **all the accused are absconding** in the case, that accused persons used to issue threats to complainant to withdraw from the 1st F.I.R and used to say that they will murder the complainant. On 22.11.2015, the complainant along with his brother namely Muhammad Yaseen and nephew Sajjan son of Manzoor Hussain Chang was going to village from Bhiria City on motorcycle when at about 2.00 p.m they reached near Shah Cotton Factory, one white color Mehran car appeared from Bhiria side, which came in front of the motorcycle of the complainant and stopped the motorcycle of the complainant, the complainant party saw that five accused persons **duly armed with weapons** were boarded in the car, out of them 3 persons were **identified to be Sikandar Ali, Oshaque Ali (the applicant)** and Himath all sons of Abdul Karim Chang and two unidentified accused persons who will be identified if seen again who were **armed with pistols**, the accused persons got down from car and accused Sikandar and others said to the complainant since they have said to withdraw from the case but the complainant did not withdraw therefore today they will murder the complainant, saying so accused Oshaque Chang (the applicant) robbed cash amount of Rs.2500/- and one mobile phone of Nokia company valuing about Rs.3000/- from the complainant, accused Sikandar Chang robbed cash of Rs.1200/- and one mobile phone valuing about Rs.2000/- from Sajjan Ali, accused Himath Ali robbed cash of Rs.1600/- from the brother of the complainant namely Muhammad Yaseen, then the accused persons aimed their weapons upon the complainant party and issued murderous threats, meanwhile one passenger bus came behind, accused while seeing passengers went away into car while making aerial firing.



3. Learned counsel for the applicant submitted that the applicant was entitled to pre-arrest bail, on the following grounds; that there has been an unexplained delay of 18 days in lodging the FIR which indicated that it was false and made up especially bearing in mind the fact that the incident took place around 5/6 miles away from the nearest police station and as such the F.I.R should have been lodged the same day of the alleged incident; that the applicant has not been assigned any specific role in the offence as per F.I.R; that enmity existed between the complainant and the applicant hence the complainant had filed the F.I.R on malafide grounds. Learned counsel further submitted that the applicant had now joined the trial proceedings and would continue to do so. In addition the offence U/S 395 P.P.C does not come within the prohibitory clause of Section 497 Cr.P.C and as such the applicant is entitled to bail as of right. He further submitted that the applicant was not required for any further investigation and as such for all the above reasons the applicant's pre-arrest bail which was granted to him by this court vide order dated 26.01.2016 should be confirmed.

4. In support of his contentions learned counsel placed reliance on the cases of **Dr.Sohrab Khan V The State** (2011 P.Cr.L.J 208) and **Abid Hussain V State** (2007 YLR 1177).

5. On the other hand, learned D.P.G submitted that there is no unexplained delay in lodging of the F.I.R; that the applicant was an absconder in other case (1<sup>st</sup> F.I.R) and was again likely to abscond; the applicant was nominated in the F.I.R and has been given a specific and active role in the commission of the offense; that there was no malafide on the part of the complainant/police and that whether or not the case falls within the prohibitory clause of Section 497 Cr.P.C in pre-arrest bail cases was not particularly relevant especially in cases of a serious nature

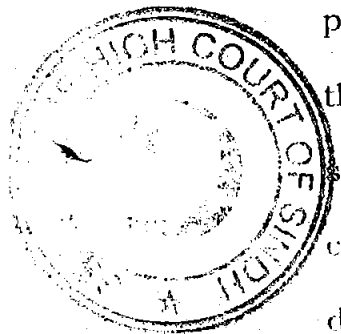


and thus for all the above reasons the pre arrest bail granted by this Court should be recalled. In support of his contentions he placed reliance on the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064).

6. Learned counsel for the complainant has adopted the arguments of learned D.P.G and further submitted that the learned District and Sessions Judge had already passed a well reasoned order, whereby the accused pre-arrest bail had been recalled vide order dated 19.01.2016 before the Trial Court which did not require interference; that there has been no malafide on the part of the complainant and that the F.I.R is a consequence of the 1<sup>st</sup> FIR No.111/2014, **whereby the same complainant had lodged a case against the applicant and others for murder**. That the grant of pre arrest bail was an extraordinary relief which was not applicable to the instant case. For all the above reasons, he submitted that the pre-arrest bail granted by this court to the applicant vide order dated 26.01.2016 should be recalled. In support of his contentions he placed reliance on the case of **Riaz Ahmad v. The State** (2009 SCMR 725).

7. I have considered the arguments of learned counsel for the parties, as well as D.P.G, perused the record and the case law cited at bar.

8. It would appear that the complainant approached the concerned police station to register the F.I.R in respect of the offence committed by the applicant on the day of the incident, however, the concerned police station declined to register the F.I.R. This lead to the complainant exercising his rights under Section 22-A Cr.P.C, which resulted, after due inquiry, in the learned Sessions Judge ordering the registration of the F.I.R on 09.12.2015. Since the F.I.R is dated 10.12.2015, this clearly

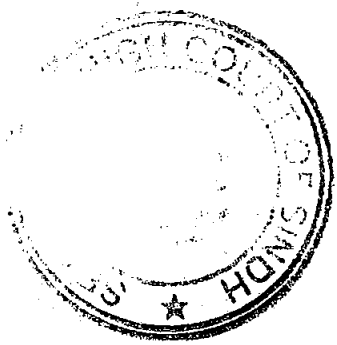


shows that there was no unexplained delay on the part of the complainant in registering the F.I.R.

9. It appears from the F.I.R that the applicant is nominated in the F.I.R and has been given a specific and active role in the F.I.R in that he along with others has attempted to intimidate the complainant by force of arms and has robbed the complainant of Rs.25,000/-(hence the instant case is distinguishable from the cases relied upon by the applicant). It would be seen that the offenses mentioned in the F.I.R have arisen out of an attempt by the applicant and others to compel the complainant to withdraw the 1st F.I.R (in which the applicant is one of the nominated accused in a murder case) through coercion and intimidation in which the applicant had remained an absconder for more than two years.

10. It also seems that the complainant had registered the 1st F.I.R No.111/2014 against the applicant and others for murder **and that the applicant had absconded in this case for over 2 years.** It is pertinent to note that the operative part of the order dated 19.01.2016 whereby the applicant's interim pre-arrest bail was dismissed by the trial court on 19.01.2016, read as under:-

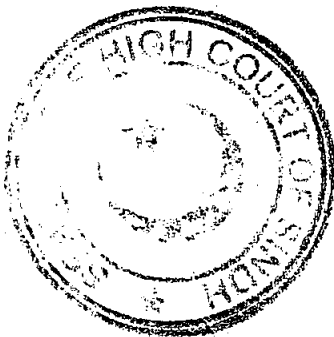
"I have heard arguments of learned counsel for the parties and perused case papers, it has been pointed out the case has been challaned hence applicant/accused is no more required for purpose of investigation. Learned counsel for the applicant/accused further pointed out that this case is result of enmity of pending criminal case shown in the F.I.R and no recovery is effected, it is surprising that through interim bail order discussed above, applicant/accused was specifically directed to join the investigation as well as trial court but unfortunately neither he has joined the investigation nor learned trial court and on inquiry accused remained silent with the result no recovery could be effected, even the interim bail was granted to applicant/accused on 18.12.2015 while challans as per record has been submitted before



the learned Magistrate concerned on 23.12.2015 in which applicant/accused has been shown as absconder it shows that after grant of interim bail he did not care to follow the directions and join investigation so also learned trial court hence, he has misused the concession of bail therefore, in such situation grant of pre-arrest bail will encourage the accused, thus looking to the circumstances bail application in hand being devoid of merits is hereby dismissed consequently order of interim pre-arrest bail discussed above stands recalled."

11. With regard to the relevance of the case not attracting the prohibitory clause under Section 497 Cr.P.C in cases concerning pre-arrest bail, it has been held in the case of **Mukhtar Ahmad v. The State and others** (2016 SCMR 2046, relevant page 2066) as under:-

**"The said respondents had been admitted to pre-arrest bail by the High Court primarily upon the consideration that the offences allegedly committed by them did not attract the prohibitory clause contained in subsection (1) of section 497, Cr.P.C. The High Court had failed to appreciate that the said consideration is hardly relevant to a case wherein what is sought is pre-arrest bail which is an extraordinary concession. This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police but not a word about this crucial aspect of the matter is to be found in the impugned orders passed by the High Court in the present case. It had also not been appreciated by the High Court that an earlier petition filed by Asif Ali respondent before the High Court seeking pre-arrest bail in the selfsame criminal case had been dismissed by the said Court on account of absence of the said respondent despite being on ad-interim pre-arrest bail. Such conduct displayed by the said respondent on the earlier occasion ought to have, in the absence of any valid justification, sufficed to disentitle him to an exercise of discretion in his favour in the second round"** (bold added)



12. That when the instant case is viewed in a holistic manner, I am of the view that there has been no malafide on the part of either the

complainant and/or police, that under the facts and circumstances of the case there has been no delay in filing the F.I.R (any such delay has been fully explained), that the applicant has been nominated in the F.I.R and has been given a specific and active role, that the offenses attributed to the applicant in the F.I.R seem to be motivated by the applicant's desire to compel through intimidation the complainant to withdraw and or not pursue the 1<sup>st</sup> F.I.R, as discussed above in pre-arrest bail cases the offense not falling within the prohibitory clause of Section 497 Cr.P.C is of little, if any, significance, (in any event the offense charged in the F.I.R carries a maximum sentence of life imprisonment or for minimum 4 to 10 years imprisonment which in my view are long sentences reflecting a serious crime), even otherwise there also seems to be prima facie sufficient material on record to connect the applicant to the commission of the offence and based on his past conduct there is a high likelihood of the applicant absconding and interfering with witnesses/complainant. Thus for the all above reasons, the ad-interim pre-arrest bail granted by this court to the applicant vide order dated 26.01.2016 is hereby recalled.

13. The instant application for pre arrest bail therefore stands dismissed.

Sd/-  
 MUHAMMAD KARTU KHAN AGHA,  
 JUDGE.

SUKKUR  
 Dated 24-02-2017.

CERTIFIED TO BE TRUE

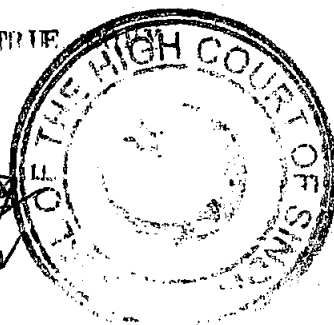
Abdul Salam/EA

TYPED BY

COMPARED BY

INITIALED BY

ASSISTANT REGISTRAR



*[Handwritten signatures and initials]*  
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