

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

Cr. B.A. No.S-197 of 2021

Muharram. Applicant

Versus

The State Respondent

Applicant Muharram present on interim pre-arrest bail	Through Ms. Nasira Shaikh Advocate
The State	Through Mr. Shahzad Saleem Nahyoon, Deputy Prosecutor General, Sindh
Complainant Hadi Bux present in person	Through Mr. Ghulamullah Chang, Advocate
Date of hearing and order	18.06.2021

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- Applicant Muharram was booked in FIR No.89 of 2017, registered at Police Station Shahpur Chakar, under sections 302, 337-H(ii), 337-A(i), 337-F(i), 147, 148, 149 PPC. The matter was challaned and now proceeding before the court of Additional Sessions Judge, Shahdadpur where charge has also been framed against him as well as other co-accused.

2. Brief facts of the prosecution case as stated in the FIR lodged by complainant Hadi Bux on 19.11.2017 at 2300 hours at Police Station Shahpur Chakar are that, he was residing in Village Bachal Khan Bargani, Taluka Shahdadpur and they had dispute with Muhammad Achar and Malook Bhanojo over agricultural land. On 18.11.2017, the complainant, his brother Babar Mirza and relatives Ali Gul and Gul Muhammad left on their motorcycle for irrigating their lands situated in

Deh Saroi. At about 1400 hours, when they reached Shahdadpur Burhoon Road near village Sultan Bhanajo, they saw accused (i) Muhammad Achar s/o Muhammad Ishaque Bhanajo armed with rifle (ii) Shabbir s/o Mooso Bhanajo armed with pistol (iii) Malok s/o Nihal Bhanajo armed with Gun (iv) Arbab s/o Muhammad Hassan (v) Ali Gul s/o Mooso and (vi) Muharram s/o Dodo having lathies were standing there, who seeing the complainant party, accused Achar challenged them by saying that why they had come on land when they were directed not to come, saying so he made fire from his rifle, which was missed, meanwhile accused Shabbir fired straightly from his pistol with intention to kill, which hit to complainant's brother Babar Mirza on right side of back and crossed through and through from front side of chest. Thereafter, the complainant tried to rescue his brother, whereon Malook caused butt blow of his Gun on complainant's right side head, while accused Arbab, Ali Gul and Muharram caused lathi blows to the complainant on his head and other parts of body and his relative Gul Muhammad and Ali Gul tried to rescue but accused Achar, Malook and Shabbir on the force of weapons did not allow to come forward by extending threats that if they come forward, they would be killed. Thereafter, the accused by making aerial firing went away. Complainant's brother died at the spot. In the meanwhile, the villagers reached there and brought them to Shahdadpur Hospital and admitted the complainant for treatment. Thereafter, dead body was sent to Shahpur Chakar Hospital, where the concerned Doctor conducted postmortem of the dead body and after conducting postmortem dead body was handed over to the complainant party for burial. Thereafter, the complainant after his treatment appeared at P.S and lodged report against the accused.

3. The applicant has approached this Court for grant of pre-arrest bail and vide order of this Court dated 08.03.2021 he was granted interim pre-arrest bail and now the matter is fixed for confirmation or otherwise.

4. Learned counsel for the applicant contends that co-accused Muhammad Achar, Malook and Ali Gul having identical role have

already been granted post-arrest bail by this Court vide order dated 18.05.2018 and since the role of the applicant is on the same footing as the applicants / accused who had already been granted post-arrest bail, the applicant's interim pre-arrest bail should be confirmed.

5. Learned D.P.G appearing for the State after going through the post-arrest bail order dated 18.05.2018, says that the role of the applicant is on the same footing as role of the other applicants/accused who have already been granted post-arrest bail by this Court vide said order and as such on legal footing he has no objection to the confirmation of interim pre-arrest bail earlier granted to the present applicant by this Court vide order dated 08.03.2021.

6. Learned counsel for the complainant has contended that the post-arrest bail order dated 18.05.2018 is inapplicable as this is a case of pre-arrest bail which involves different facts. He has also stated that the applicant was an absconder in the past and is likely to abscond again, hence is not entitled for grant of pre-arrest bail.

7. I have heard the learned counsel for the parties and considered the record.

8. With regard to the rule of consistency, I set out paragraph-9 of the order dated 18.05.2018 below for ready reference:-

“ It is an admitted position, that applicant / accused Malook has been assigned a role of ineffective firing as he was armed with rifle and he fired from his rifle on complainant party but fire was missed. The role of co-accused Malook is concerned, he was shown armed with gun and he caused butt blow of his gun to complainant's right side head, whereas the role of applicant Ali Gul is concerned, he along with co-accused Muharram and Arbab caused lathi blows to the complainant on his head and other parts of the body.”

9. It can clearly be seen from the above reproduced paragraph-9 that role of the applicant/accused Ali Gul, who was granted post-arrest bail and that of the present applicant Muharram, who is seeking pre-arrest bail, is absolutely same and identical as such the rule of consistency is applicable to the applicant.

10. It is true that the applicant was an absconder, however, this should not stand in his way from being granted confirmed pre-arrest bail. It is well settled by now that in a case of pre-arrest bail where a co-accused with similar role as the applicant, has been granted post-arrest bail the applicant should also be granted confirmed pre-arrest bail. This is because if pre-arrest bail is refused to the applicant he would most certainly be granted post-arrest bail based on rule of consistency and as such sending the applicant to jail would serve no useful purpose.

11. Based upon the above discussion, the interim pre-arrest bail earlier granted to the applicant vide order of this Court dated 08.03.2021 is hereby confirmed subject to furnishing an **additional** surety in the sum of Rs.200,000/- (Rupees two hundred thousand) and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court.

12. The applicant shall ensure his attendance before the trial Court on each and every date of hearing and the trial Court is directed to complete the trial within a period of six months from the date of this order. A copy of this order shall be sent immediately to trial Court for compliance.

13. The bail application stands disposed of in the above terms.


JUDGE 18/06/21.

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