

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Appln. No. S-482 of 2016

Date

Order with signature of Judge

1. For order on office objection.
2. For hearing of bail application.

25-08-2017

Mr. Ali Bux Mashori, advocate for the applicant a/w applicant.

Mr. Ahsan Ahmed Qureshi, advocate for the complainant.

Mr. Aijaz Mustafa Samtio, DDPP for the State.

Reasons to be recorded later-on, interim pre-arrest bail already granted to the applicant by this court vide order dated 07.10.2016 is hereby dismissed.


Judge

Abdul Sami P.A.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Appln. No. S – 136 of 2016

1. Muhammad Qasim
2. Amjad Ali
3. Sajjad Ali

Applicants

versus

The State

Respondent

Cr. Bail Appln. No. S – 482 of 2016

Khan Muhammad @ Khanu

Applicant

versus

The State

Respondent

Date of hearing : 25-08-2017

Date of short order : 25-08-2017

Mr. Ashfaq Hussain Abro, Advocate for Applicants Muhammad Qasim, Amjad Ali & Sajad Ali.
Mr. Ali Bux Mashori, Advocate for Applicant Khan Muhammad @ Khanu.
Mr. Ahsan Ahmed Qureshi, Advocate for complainant.
Mr. Aijaz Mustafa Samtio, DDPP for the State.

ORDER

Omar Sial, J: Applicants Muhammad Qasim Unnar, Amjad Ali Unnar and Sajjad Ali Unnar have sought pre-arrest bail (through CrI. Bail Application No. 136 of 2016) in crime number 41 of 2015 registered u/s 364, 302, 148, 149, 337-H(ii) P.P.C. at the Badah police station. Applicant Khan Mohammad has also sought pre-arrest bail (through CrI. Bail Application No. S-482 of 2016) in the same crime. Through this common order I will dispose of both the applications.

2. Brief facts of the case are that on 21-10-2015 one Mumtaz Ali Kalhoro lodged the aforementioned FIR stating therein that he owns a fish pond in Deh Seehar. A long time ago he had a fight with Applicant Amjad Ali Unnar and Applicant Sajjad Ali Unnar over the fish pond. On 11-10-2015 the complainant along with his sons Rasheed Ali, Rashid Ali and Allah Dino were at the fish pond when at about 5:30 p.m., the Applicants along with another accused Abdul Aziz and two other unidentified persons, all armed, appeared on the scene. After an exchange of harsh words, Applicant Amjad Ali Unnar and Sajjad Ali Unnar forcibly took away Rasheed Ali saying that the complainant will now find his dead body as they had not mended their ways in connection with the fish pond. The assailants left the scene while resorting to aerial firing. The complainant party approached one Haji Ghulam Abbas Mirbahar who was an elder of the

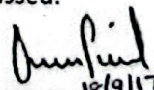
accused party but all negotiations were futile. On 20-10-2015 the complainant party found the dead body of Rasheed Ali from the fish pond.

3. I have heard the learned counsel for the Applicants as well as the complainant and the learned APG and have also examined the record with their able assistance. My observations are as follows.

- (i) The learned counsel for the Applicants has primarily concentrated his argument on the fact that 2 days prior to the lodging of the F.I.R., the complainant's son Rashid Ali had ostensibly filed a report at P.S. Seehar that his brother was missing, however, in the said report the accused were not named and it was further recorded that the deceased Rasheed Ali had gone somewhere on his own and was missing. In support of his argument, the learned counsel produced the original of the said report with a stamp of the Seehar police station on it. The counsel for the complainant vehemently denied this fact and argued that no such report was made. The Senior Superintendent of Police was directed by this Court to verify whether the said entry had been made in the relevant police station. The Deputy Superintendent of Police was assigned the task to inquire about the same. The DSP reported that no such entry was found in the daily diary of the police station. He produced a copy of a letter which was ostensibly submitted by the brother of the complainant at the police station Seehar. Surprisingly, the letter produced by the learned counsel for the Applicants was not the same as the one that was produced by the DSP. The Applicants were confronted with the report of the DSP but they chose to remain silent. It is also odd that the accused had in their possession an original of a letter that they claim they had submitted to the police station. Prima facie it appears that the Applicants have misstated facts, the final conclusion on which can only be drawn when evidence is led.
- (ii) The learned counsel has next argued that after investigation the police had recommended that the F.I.R. in this case be disposed of in "A" class but the learned magistrate had not agreed with the police recommendation. It is a well settled principle now that a magistrate is not bound to agree with a police recommendation and such disagreement cannot be made the sole ground for the grant of a pre-arrest bail.
- (iii) It is a pre-requisite for the grant of a pre-arrest bail that malafide or ulterior motive be shown on the part of the police and/or complainant as well as there should be circumstances that warrant further enquiry. The learned counsel for the Applicants has attempted to justify the grant of pre-arrest bail on the

ground that Applicant Sajjad Ali Unnar had earlier filed a F.I.R. bearing number 2 of 2013 u/s 302 against one Bashir Ahmed Sehar. During investigation a mobile phone of the deceased of that case was recovered from one lady Shama Sargani who was the sister-in-law of one Deedar Ali Sehar. Applicant Sajjad Ali had however requested the police not to involve Shama Sargani in the case. With great respect, there is nothing on record that would at least prima facie show the authenticity of the argument raised by the learned counsel. The learned counsel has been unable to satisfy me as to what connection the case arising out of FIR No. 2 of 2013 has with the present case and how the filing of that FIR shows malafide or ulterior motive on the part of the police or the complainant. 105

- (iv) The learned counsel has also argued that there is a 10 day delay in the filing of the F.I.R. and therefore the case is doubtful and that pre-arrest bail be granted. I have observed that prima facie the complainant has explained the delay in the FIR but even otherwise, such a delay in filing of the FIR would not be sufficient for an accused to be admitted to a pre-arrest bail.
- (v) The learned APG states that none of the Applicants have been investigated as yet as the police has not had an opportunity to interrogate them. None of the grounds raised by the learned counsel for the Applicants is sufficient for the Applicants to be granted the extra-ordinary concession of pre-arrest bail.
- (vi) Above are the reasons for my short order of 25-8-2017 in terms of which both the pre-arrest bail applications filed by the Applicants were dismissed.


JUDGE 18/9/17