

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

**Cri. Bail Appln. No. J-231 of 2022**  
(*Manthar Ali Sario v. The State*)

**Cri. Bail Appln. No. J-237 of 2022**  
(*Riaz Hussain Babar v. The State*)

Mr. Ali Anwar Sahar, advocate for applicants  
Mr. Aitbar Ali Bullo, Deputy Prosecutor General  
Mr. Waseem Ahmed Solangi, advocate for Complainant

Date of hearing  
& order : 21.07.2022.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Both the bail applications have been filed in one and the same FIR, as such, the same are being disposed of by this common order.

2. Applicants Manthar Ali Sario *alias* Mumtaz Ali *alias* Mirchoo and Riaz Hussain Babar seek pre-arrest bail in FIR No.64/2022, registered at Police Station Khairpur Natha Shah, District Dadu, under Sections 302, 504, 324, 147, 148, 149, 504, 337-H(2), PPC. Pre-arrest bail applications filed by them before the learned trial Court were rejected by the learned Additional Sessions Judge-I (MCTC), Dadu vide separate orders dated 27.04.2022 on the analogy that both the applicants participated in the crime with the common object and result whereof Ghulam Yaseen brother of Complainant died.

3. It is, *inter alia*, contended by Mr. Ali Anwar Sahar, learned Counsel for the applicants that they are innocent and have been falsely implicated by the complainant on account of enmity over the landed property; that there is a delay of two days in the lodgment of FIR, for which no plausible explanation has been furnished by the complainant; that no active role has been assigned to the applicants in the commission of the alleged offence and their mere presence has been shown; that the case against the applicants calls for further inquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. He next contended that the basic principle in bail matters is such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of (a) his absconding to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his



repeating the offense while keeping in view his previous criminal record or the desperate manner in which he, prima facie, acted in the commission of offense alleged. Hence, the applicants are entitled to a concession of pre-arrest bail as provided under section 498 Cr.P.C. In support of his contentions, learned Counsel has referred to the cases reported as *Muhammad Shakeel v. The State*, **PLD 2014 Supreme Court 458**; and *Nawaz Ali Jatt v. The State*, **2020 P Cr. L J Note 89**. He lastly prayed for confirmation of the pre-arrest bail already granted to the applicants by this Court.

4. Learned DPG assisted by Mr. Waseem Ahmed Solangi, learned Counsel for the complainant, vehemently opposed the bail applications of the applicants and contended that both applicants are named in the FIR; that they being armed with weapons facilitated the principal co-accused to kill the deceased Ghulam Yaseen, thereby sharing their common object, resultantly one innocent person lost his life, therefore, they are not entitled to extraordinary concession of pre-arrest bail. Learned counsel representing the complainant submitted that since the applicants played a Vitol role at the time of occurrence and due to their assistance provided to the main culprits, they could not be absolved from their action, which they did at the time of incident, as such their remaining at large has caused damage to the case of the complainant, therefore, their bail applications needs to be dismissed.

5. I have heard learned counsel for the parties, and perused the material available on record at the case law cited at the bar.

6. According to the case of the prosecution, on 03.04.2022, at about 8.20 a.m., the applicants being members of a group of 10 culprits, named in the FIR, duly armed with deadly weapons, emerged at the agricultural land of the complainant Ghulam Shabir Babar and prevented the complainant and PWs from harvesting the mustard crop. On the resistance offered by the complainant party, accused Ghulam Mustafa fired pistol shots at Ghulam Yaseen, brother of the complainant; accused Riaz son of Khuda Bux fired with his repeater gun at injured PW Mohammad Murad, another brother of complainant, hitting in his left leg; whereas accused Qamaruddin fired with his gun at injured PW Imran, nephew of the complainant, hitting in his right leg; whereafter all the accused persons having firearms made aerial firing and went away. The complainant party found Ghulam Yaseen dead. The dead body of Ghulam Yaseen and injured Mohammad Murad and Imran were taken to Taluka Hospital for postmortem and medical treatment. After the postmortem and funeral process and burial of the dead body of deceased Ghulam Yaseen, the complainant approached the police and lodged FIR on 05.04.2022.

7. The accusation against the applicants is that on 3.4.2022 applicants in collaboration with other accused killed Ghulam Yaseen; and, the principal accused fired upon Ghulam Yaseen, who succumbed to his injuries and died, such report of the



incident was made to Police Station Khairpur Nathan Shah to the above effect, their earlier bail applications were rejected by the learned Additional Sessions Judge-1, MCTC Dadu on the ground that they facilitated the principal accused in murdering deceased Ghulam Yaseen. The tentative assessment of the present case is as follows:-

- i) In the FIR and/or statements of PWs, no direct role in causing injury to the deceased and/or PWs has been assigned to the applicants.
- ii) No recovery of the alleged weapon has been effected from them.
- iii) The applicants are attending the trial Court.

8. Prima-facie, there is no allegation against the applicants of causing injury to the person of any member of the complainant party. Applicants are alleged to have facilitated their accomplices to cause the death of deceased Ghulam Yaseen and alleged to have made an aerial firing. In such circumstances of the case, it is for the learned trial Court to determine the role of the applicants in the commission of alleged crime, after recording evidence to the effect whether the applicants are vicariously liable for the acts of their co-accused. F.I.R. In this case, applicants have pleaded their imminent arrest, in the subject F.I.R, at the hands of Police, to cause humiliation. If this is the position of the case, prima facie, the applicants' case falls within the purview of Section 498 Cr.P.C.

9. For the foregoing, the applicants' interim pre-arrest bail earlier granted vide orders dated 29.4.2022 and 9.5.2022 is confirmed in the instant FIR, on the same terms and conditions.

10. The observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, if the applicants during proceedings before the trial Court, misuse the concession of pre-arrest bail, then the trial Court would be competent to cancel their bail without making any reference to this Court. The learned trial court shall take pains to record evidence of the complainant within one month positively.

11. Bail applications stand disposed of in the above terms.

~~JUDGE~~