

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. D- 187 of 2018

Date of hearing	Order with signature of Judge
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1. For orders on office objection.
2. For hearing of main case.

Before:

Mr. Justice Salahuddin Panhwar &
Mr. Justice Adnan Iqbal Chaudhry.

29-06-2018

Mr. A. R. Faruq Pirzada Advocate for applicant.

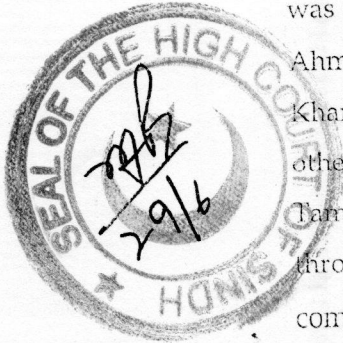
Mr. Abdul Rehman Kolachi, Deputy Prosecutor General a/w Muhammad Aijaz Bhatti, DSP/I.O of crime No. 20 of 2018 of P.S, Mehar-Dadu.

Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.1.

ORDER

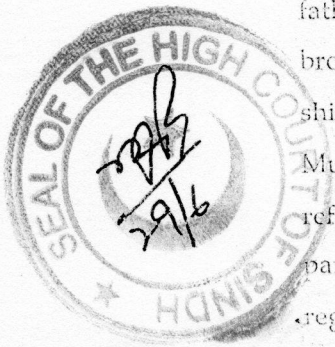
Salahuddin Panhwar, J. Through this Crl. Misc. Application, applicant seeks cancellation of pre-arrest bail order dated 24.02.2018, whereby interim pre-arrest bail of respondents No.1&2 in crime No. 20 of 2018 of P.S, Mehar-Dadu for offences under sections 302, 504, 114, 109, 148, 149 PPC r/w section 6/7 ATA, 1997, was confirmed by learned Judge, ATC, Naushehro Feroze.

2. Facts of prosecution case, as set out in the FIR, are that complainant Pervaiz Ahmed (applicant) lodged FIR alleging therein that Mukhtiar Ahmed is his brother, whereas Karamullah Khan Chandio is his father, who was Chairman of U.C Baledi. One Sardar Khan Chandio son of Shabir Ahmed since long used to issue threats to his brother Mukhtiar Ahmed Khan Tamandar in respect of his collusion against him with the help of other Tamandars. He asked him to stop or to face consequences along with Tamandar Council and other family members. Such threats were conveyed through different people at different times. On 17.01.2018 in the morning, complainant along with his father Karamullah Khan, brothers Mukhtiar Ahmed Khan and Qail Hussain, Member District Council, cousins Aijaz Ahmed and Manzoor Ahmed were standing outside their Otaq situated at road leading from police station towards Fareedabad, when at 09-00 a.m,



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two vehicles viz. one white Corolla Car No. BFZ-428 and another white Land Cruiser came and stopped, out of which six armed persons identified as 1. Ali Gohar Chandio with KK, 2. Ghulam Murtaza Chandio with repeater, 3. Sikandar Chandio with repeater, 4. Zulfiqar Chandio with repeater, 5. Ghulam Qadir alias Qadu Chandio with repeater and one accused Burhan Chandio was sitting in Land Cruiser and retracted down glass window of the car and instigated other accused that these people inspite of many warnings tried to insurrect against Sardar Khan therefore teach them a lesson and make example for others and kill them, on such instigation of Burhan Khan and at the instance of Sardar Khan, other accused opened fires and created terror among the people and accused Ghulam Qadir alias Qadu made fire of his repeater upon father Karamullah which hit him on his belly, his father grappled accused Ghulam Qadir during which other accused, namely, Ali Gohar with KK and Ghulam Murtaza with repeater fired in order to rescue Ghulam Qadir and one KK fire hit father Karamullah on right side of chest and other KK and repeater fire hit Qadu and both of them fell down, thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhtiar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his KK which also hit Mukhtiar Ahmed on his face and he fell down while screaming, thereafter accused Sikandar fired directly with his repeater with intention to murder upon his brother Qabil Hussain which hit him on his right side buttock who also fell down while screaming. Thereafter, all accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western side. Then complainant party saw brother Mukhtiar Ahmed who sustained firearm injuries on his face and chest and father Karamullah sustained firearm injuries on his belly and chest and brother Qabil Hussain sustained firearm injuries on his buttock whom they shifted to Taluka Hospital, Mehar where father Karamullah and brother Mukhtiar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. After proceedings at hospital, complainant party buried the dead bodies and in the evening received information regarding death of Qabil Hussain at Larkana, whose dead body was shifted to Taluka Hospital, Mehar and after its postmortem, complainant came at P.S and lodged the FIR that accused in collusion with each other duly armed spread panic and terror and fired indiscriminately at the instance of Sardar



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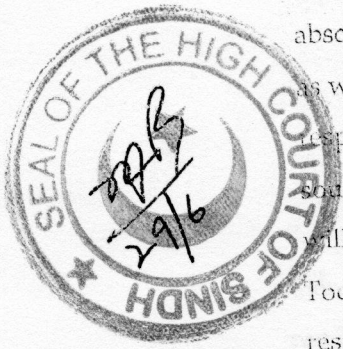
Khan and on the instigation of Burhan Khan and have murdered Mukhtiar, Qabil Hussain and Karamullah and terrorized common men who shut their shops and ran away.

3. Learned counsel for applicant/complainant submitted that respondents No.1&2/accused are nominated in the FIR with clear motive for commission of offence and specific role of abetment and instigation to facilitate co-accused to commit the murders of three deceased persons; that plea of alibi of accused Burhan Khan Chandio cannot be considered at this stage, therefore, respondents No.1&2/accused are not entitled to bail. Lastly, he prayed for cancellation of pre-arrest bail granted to the respondents No.1&2/accused by the trial court.

4. Learned DPG for the State while adopting the arguments advanced by learned counsel for applicant did not support the impugned order. In addition, he relied upon cases of Mamars v. The State and others (PLD 2009 SC 385), Muhammad Arshad v. The State (2006 SCMR 966), Shoukar Ilahi v. Javed Iqbal (PLJ 2011 SC 40), and unreported order dated 12.12.2012, passed in Cri.M.A.No. D-620 of 2011.

5. This Cri. Misc. Application was presented on 05.03.2018. Notices were issued and on the next date i.e. 28.03.2018, Mr Athar Abbas Solangi Advocate filed Vakalatnama on behalf of respondents No.1&2. On 12.04.2018, learned AFG sought time due to non-availability of police papers. On 03.05.2018, learned counsel for respondents filed reply, however, on 17.05.2018, counsel for applicant was not available but by order dated 26.06.2018 directions were issued with regard to arrest of absconding accused, protection of complainant witnesses and their families as well matter was adjourned with intimation notice to learned counsel for respondents. On 28.06.2018, associate of learned counsel for respondents sought time on the plea that his senior is not well and contended that he will argue this matter today, hence this matter was adjourned for today. Today, Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.1, however, we partly heard Mr. Malano, but he seeks time and insists to argue before another Bench.

6. The conduct, displayed by the respondent and counsel, is not worth appreciating, because a right of hearing is never meant to prejudice the



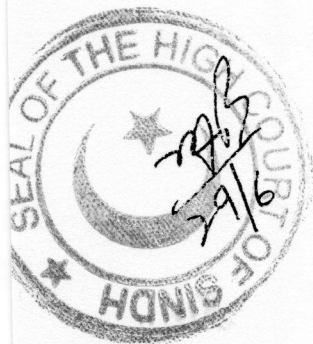
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Chandio cannot be considered at this stage. He prayed for cancellation of interim pre arrest bail granted to applicants/accused. Learned APF for the State submitted that investigation has been completed and applicants/accused are found innocent and I.O has recommended for applicants/accused Sardar Khan and Burhan Khan u/s 497 and 169 Cr.P.C respectively. In view of investigation learned APG for the State do not raise objection for confirmation of interim pre-arrest bail granted to applicants/accused.

Heard learned counsel for the applicants/accused, learned APG for the State assisted by learned counsel for the complainant and perused the papers. As per F.I.R. only allegation against applicant/accused Sardar Khan is that he has hatched conspiracy of the offence, but no specific date, time, place and witnesses have been disclosed by the complainant in the F.I.R. The plea of alibi of accused Burahn is verified by the I.O by recording statements of witnesses, where applicant/accused stayed at the time of incident and also collected CDR of cell phone numbers used by applicant/accused Burahn Khan, who also shows his presence at Qasimabad. I.O has recorded statements of three independent witnesses from place of occurrence, they have also not supported the version of complainant regarding presence of applicant/accused and instigation of murder of Karamullah Chandio and others. From the evidence collected by the I.O no objection raised by the APG for the State, applicants/accused have made out their case for further inquiry, as such interim pre arrest bail granted to applicants/accused vide order dated 29-01-2018 stands confirmed on same terms and conditions"

9. Admittedly, before passing of impugned order, one Crl. Transfer Application No.D-54 of 2018 was received by this court, wherein it was pleaded that counsel for accused and presiding officer of trial court are friends. We would not take up such *contention* in the instant matter but would *confine* ourselves onto merits alone. However, what we cannot understand is another aspect that on same and same date, learned trial judge accepted police report thereby not treating the present respondents as 'accused' but *accepted* them as 'innocent' yet confirmed their bail. Needless to say that bail could be granted to those against whom there is a *case*. Such bail *grant* order appears to be result of complete ignorance to Section 498-A of the Code (Cr.P.C.).

10. We are conscious of the legal proposition of law that *normally* a bail grant would not be reversed unless found to be completely against the



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evidence/material, available on record, as well settled principles of law for grant of *pre-arrest bail* in particular. Admittedly, respondent No.2/accused Burhan has been granted bail on the plea of alibi, whereas, trial court order is not showing reasons with regard to bail grant of respondent No.1/accused Sardar Khan Chandio.

11. Be that as it may, we have minutely examined record with the assistance of learned counsel for applicant, learned DPG and I.O. It is matter of record that this is a case of three persons murder. Political rivalry is alleged against respondents/accused, who are claiming to be Sardar of Chandia tribe. It is settled principle of law that plea of alibi cannot be considered for controlling the *discretion* of grant or otherwise of bail *plea*. There is no denial to the fact that all witnesses of prosecution have categorically supported the allegations against the respondent no.2 Burhan hence *plea of alibi* alone was never sufficient to prevail over the prosecution material. Needless to add that *statements* of independent persons, even if recorded during course of investigation, if appears to be *defence* version, be not allowed to prevail over prosecution witnesses. This is for simple reason that if such *practice* is allowed, the influential accused persons would always succeed in getting such *material*. This aspect *perhaps* was never taken note by learned trial Court. We would also add that *discretion* to grant or refuse bail plea is not dependant upon police opinion or 'no objection / objection of state counsel' but an *independent view* of the Court *itself* that accused made out a case for grant of bail within meaning of *criteria*s, so set for post or pre-arrest bail, as the case may be. Thus, impugned order, being based on said reason, is not tenable. For making out a case for *pre-arrest* bail it was obligatory upon the accused / respondent Burhan that his involvement was result of *malafide* on part of the *police* or *complainant* party but no such thing is there in the impugned order. It is by *now* a well settled principle of law that :

- a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

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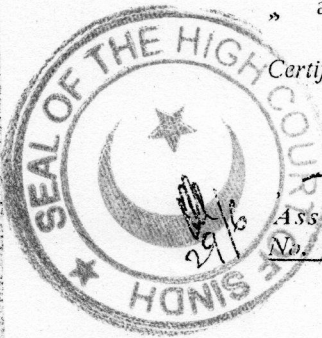


- c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of Section 497 of Code of Criminal Procedure i.e unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

Reference may be made to the case of Rana Muhammad Arshad v. Muhammad Rafique & another (PLD 2009 SC 427). The *absence* of reasons in impugned order with regard to *mala fide* on part of the police and complainant will always be sufficient for setting aside such an *order*. In view of these, impugned order is set-aside to the extent of respondent/accused Burhan Chandio. IGP, Sindh shall ensure his arrest and production before the Court of law.

12. With regard to respondent No.1/accused Sardar Khan Chandio, it has come on record that allegation against him is that of *abetment/ conspiracy* but ingredients to establish such allegations would require *proof* (evidence) therefore, mere allegation of connection, would make out the case of the respondent Sardar Khan Chandio, within meaning of *further* probe hence no *useful* purpose would be served by committing him to custody for his *ultimate release* which he (accused) would claim as *matter* of right. Hence, impugned order to his extent is maintained.

13. Accordingly, instant Crl. Misc. Application stands disposed of in above manner.



Certified to be true copy.

Assistant Registrar

No. 2284/HCSS/-2018, Sukkur dated. 29.06.2018

Sd/- Sallahuddin Panhwar
Judge

Sd/-Adnan Iqbal Chaudhry
Judge

Copy forwarded for information and compliance as per order to

01. The learned Additional Advocate General Sindh At Sukkur
02. The lerned Anti-Terrorism court N/Feroze
03. The Inspector General of Police Sindh I.I Chundrigar Road Karachi
04. The Sr. Superintendent of Police Dadu.
05. The SHO Police Station Mehar.
06. Investigation Officer In Crime No. 20/2018 Police Station Mehar.
07. Copy to the compliant.

Muneer Shah Mushwani
Assistant Registrar
High Court of Sindh Bench at Sukkur