

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 357 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.

24.08.2020

Applicants are present on interim pre-arrest bail.

Ms. Rameshan Oad, A.P.G.

Mr. Muhammad Sachal R. Awan, Advocate for the complainant.

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ABDUL MAALIK GADDI, J.-Through this bail application, the applicants seek pre-arrest bail in Crime No.11 of 2020, registered at Police Station Diplo, under sections 147, 148, 149, 504, 506(2), 337-A(i), 337-F(i) PPC.

2. It is noted that all applicants in present application are on interim pre-arrest bail granted to them by this Court vide order dated 22.04.2020 and today the bail applications is fixed for conformation or otherwise.

3. As per F.I.R, the allegation against the Applicants are that on 06.04.2020 when complainant Muhammad Hussain started cutting of "Devi" Jungle (Bushes) through his labour and complainant and his brother namely Anwar were standing on the side of road, meanwhile at about 04:00 p.m. present accused / applicants having hatchets in their hands except Saleh who was armed with lathi came there and due to dispute over cutting of such "Devi" jungle, accused / applicants Muhammad Moosa and Rab Nawaz have caused hatchet injuries to P.Ws Anwar and Sawan on different parts of their bodies.

4. Though learned counsel for the applicants / accused is not present; however, since connected applications being Cr. Bail Application Nos.S-530 and 358 of 2020 have been heard and decided today by a separate order, therefore, instant application has also been taken up to be heard and decided

with the assistance of learned A.P.G as well as learned counsel for the complainant.

5. Applicants submit that they are innocent; that the F.I.R. is false and fabricated and they have falsely been implicated in this case due to dispute on cutting of "Devi" jungle, hence malafide on the part of complainant is apparent; that F.I.R. has been lodged with a delay of about 08 hours without any plausible explanation which creates doubt in prosecution story; that injury attributed to applicants Moosa and Rab Nawaz though allegedly on vital part but the said injuries have not been described by Medico-Legal Officer as dangerous or detrimental to the lives of injured/P.Ws; that challan of the case has been submitted and they are no more required for investigation purpose. Under these circumstances, applicants prayed for confirmation of interim pre-arrest bail already granted to them.

6. Learned A.P.G duly assisted by the learned counsel for the complainant have opposed this bail application on the ground that injuries caused to P.Ws Anwar and Sawan are on vital parts of their bodies and the Medico-Legal Officer has opined the same to be fall under section 337-A(iii) PPC and punishable for up to 10 years.

7. Arguments heard and record perused.

8. It is noted that case has been challaned and present applicants are no more required for investigation purpose. It is also noted that the dispute was arose at the spur of moment on cutting of "Devi" jungle. The only allegation against accused / applicants Moosa and Rab Nawaz are of causing hatchet blows to P.Ws Anwar and Sawan respectively, whereas other accused / applicants have caused lathi blows. The injuries attributed to present applicants have not been described by the Medico-Legal Officer as dangerous or detrimental to the lives of the P.Ws Anwar and Sawan. P.Ws Anwar and Sawan present in Court appear to be well and they submit that at present they are comfortable; whereas as argued by learned A.P.G and learned counsel for

the complainant that the punishment provided for the injuries allegedly sustained by P.Ws Anwar and Sawan is up to 10 years is no ground for refusal of bail. On Court query, it is stated by the applicants that they are regularly attending the trial Court.

9. It is noted that this F.I.R. appears to be counterblast of F.I.R. bearing No.12/2020 lodged by applicant party against the complainant party at same P.S Diplo, therefore, question which party is aggressor and which party has been aggressed upon has to be decided after recording of evidence by the trial Court. It is also noted that most of the sections appearing in this case are either bailable or do not fall within the prohibitory clause of section 497 Cr.P.C. except section 337-A(iii) PPC and it is yet to be determined at the time of trial whether the alleged injuries were actually caused by applicants Moosa and Rab Nawaz or otherwise. Apparently no recovery was affected from any of the applicant. The applicants are on interim pre-arrest bail and they are appearing before this Court regularly since last 04 months and during such period they did not misuse such concession; therefore, under these circumstances grant of bail in such a situation is a rule and its refusal is an exception. There is no exceptional ground available on record to withhold the bail to applicants. Accordingly, I feel no hesitation to allow this application; resultantly, the interim pre-arrest bail already granted to the applicants vide orders dated 22.04.2020 is hereby confirmed on same terms and conditions. However, the trial Court is directed to proceed with the case expeditiously and decide the same preferably within a period of 30 working days from the receipt of this order and shall ensure that no un-necessary adjournment is granted to either party.

10. It is made clear that during trial any of the applicant misuses the concession of pre-arrest bail, the trial Court would be competent to take necessary action against the delinquent applicant without making any reference to this Court, in accordance with law.

11. Needless to mention that the observations made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of them while proceeding with and deciding the case on merits.

12. Bail application stands disposed of alongwith pending applicant(s).

JUDGE

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