

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr.Bail Appln:No.S- 721 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

14-09-2017

Applicant is present on interim pre-arrest bail.

Mr. Poonjo Ruplani, Advocate for applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

Mr. Muhammad Hassan Chang, advocate a/w complainant.

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ABDUL MAALIK GADDI,J- Through instant bail application applicants seek pre-arrest bail in Crime No.38 of 2017 under Sections 337-F(vi), 114, 504, 34 P.P.C, registered at police station Khoski. Earlier his bail application has been dismissed by learned Sessions Judge, Badin vide order dated 22.8.2017. Today this bail application is fixed for confirmation or otherwise.

2. The allegations against the applicant/accused are that on 18.08.2017 at 2030 hours complainant lodged FIR alleging therein that on 17.07.2017 at about 6-30 pm, he was cutting grass of his land in the meantime one Zulfiqar Ali Bhurgri having lathi in his hand and Wahid with empty handed came running there while abusig and asked the complainant that as to why he is cutting grass, on which he replied that he is cutting grass from his side and at the moment on the instigation of accused Wahab, co-accused Zulfiqar caused lathi blow to the complainant and on his head, but while saving himself complainant raised his arm which hit on it. Thereafter, on cries of complainant one Anwar and Mumtaz rushed there, therefore the accused persons sneak away from the occurrence, hence, this FIR.

3. Learned counsel for applicant argued that applicant is innocent and has falsely been implicated in this case by the complainant due to enmity over land; that the allegation against the applicant and the role allegedly assigned to applicant is quite untrustworthy and shaky, requires detailed probe/inquiry into it; that the incident took place at day light time but no independent person has been cited as a

witness of alleged incident, and the Pws are close relative to the complainant; that there is delay of about one day in registration of FIR without plausible explanation; that prior to this the present applicant has also moved an application against complainant party to SSP Badin, as such according to him the enmity is apparent and false implication of the applicant in this case cannot be ruled out; that the injury attributed to the applicant does not fall within the ambit of prohibitory clause of section 497 Cr.P.C, therefore, he prays for confirmation of bail in the larger interest of justice.

4. Conversely, D.P.G assisted by learned counsel for complainant has opposed this bail application on the ground that the name of applicant is appearing in FIR with specific role that the present applicant has caused lathi blow to the complainant which hit him on his left arm, therefore, he is not entitled for grant of bail in his favour.

5. Arguments heard and record perused.

6. It appears from the record that the alleged incident took place on 17.07.2017 at 1830 hours while FIR has been registered on 18.8.2011 after the delay of about one day, for which no satisfactory explanation has been furnished, hence, due deliberation and consultation at the part of complainant party cannot be ruled out. Further, it appears from the record that prior to this incident applicant had filed an application against the complainant to the SSP Badin over the dispute of land and sought protection, therefore, the enmity is apparent in between the parties, hence, false implication of applicant cannot be ruled out. Be that as it may, the injury attributed to the applicant has been declared by the medico legal officer as under Section 337-F(vi) PPC which is on non-vital part of body and the punishment of the same does not fall within the ambit of prohibitory clause of section 497 Cr.P.C and in such like cases the grant of bail is a rule and refusal is an exception. No exceptional evidence has been pointed out by D.P.G in this case with withhold the bail of applicant. Notwithstanding, in this matter the investigation has been completed and challan against applicant/accused has already been submitted, therefore, the applicant/accused is no more required for further investigation, as such, under these circumstances no exceptional circumstance appears in this case to

withhold bail of the applicant. I, therefore, in view of the above allow this bail application and confirmed the interim pre-arrest bail in favour of applicant passed earlier on same terms and conditions with directions to the applicant/accused to appear before the trial court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

JUDGE

Ahmed/Pa