

ORDER SHEET**THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA****Criminal Bail No.S-464 and 488 of 2020****Criminal Bail No.S-239 and 10 of 2021**

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection "A".
2. For hearing of bail application.

15.09.2021

Mr. Mazhar Ali Bhutto, Advocate for the Applicants in Criminal Bail Application No.S-464 of 2020.

Mr. Mazhar Ali Mangan, Advocate for the Applicant in Criminal Bail Application No.S-239 of 2021.

Mr. Abdul Khaliq Kalhoro, Advocate for the Applicants in Criminal Bail Application No.S-10 of 2021 and 488 of 2020.

M/s. Muhammad Afzal Jagirani and Kazi Manzoor Ahmed, Advocates for the Complainant.

Mr. Ali Anwar Kandhro, Additional Prosecutor General Sindh.

Heard arguments of the learned counsel for the parties.

Reserved for Order.



Manzoor

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1st CrI. Bail Appln. No.S-464 of 2020
 1st CrI. Bail Appln. No.S-239 of 2021
 CrI. Bail Appln. No.S-10 of 2021
 CrI. Bail Appln. No.S-488 of 2020

Date	Order with signature of Hon'ble Judge
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Mr. Mazhar Ali Bhutto, advocate for the applicants in Cr. B. Appln. No.S-464 of 2020.

Mr. MazharAli Mangan, advocate for the applicant in Cr. Bail Appln. No.S-239 of 2021.

Mr. Abdul Khaliq Kalhoro, advocate for the applicants in Cr. B. A. No.S-10 of 2021 and S-488 of 2020.

M/s Mohammad Afzal Jagirani and Qazi Manzoor Ahmed, advocates for the complainant.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of Hearing : 15.09.2021.

Date of decision : 13.10.2021.

ORDER

Omar Sial, J.- Zahid, Muhammad Qasim, Imran Ali, Muhammad Urs, all by caste Kalhoro (applicants in CrI. Bail Application No.10 of 2021) and Nazir Hussain, Bilawal and Jabir, all by caste Kalhoro (applicants in CrI. Bail Application No. S-464 of 2020) have all sought post arrest bails in F.I.R. No.9 of 2020 registered under sections 324, 114, 337-A(i), 337-F(i), 147, 148, 149 and 504, P.P.C. at the Airport Police Station in Larkana. Simultaneously, in the same crime, Shafi Muhammad and Dilbar, both by caste Kalhoro (applicants in CrI. Bail Application No.S-488 of 2020) as well as Munawar Ali Kalhoro (applicant in CrI. Bail Application No.S-239 of 2021) have sought pre-arrest bails. Earlier, their pre-arrest and post arrest bail applications were dismissed on 29.7.2020, 07.09.2020 and 16.2.2021 by the learned 2nd Additional Sessions Judge, Larkana.

2. As per the contents of the FIR dated 08.06.2020, the complainant, Ali Nawaz Kalhoro stated that he has a dispute with Imran Ali Abbasi over a piece of land and that on 07.06.2020, he along with his brother Mazhar Ali were present at their shop, when fifteen people who were all identified,



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and included the applicants, arrived at the shop. All the accused(s) were armed either with a pistol or a repeater or a gun or a danda or a hatchet except for one Shafi Muhammad who was empty handed. The accused used abusive language against the complainant and his brother. Upon hearing the commotion, 14 people from the complainant's side reached the shop too. On the provocation of accused Shafi Muhammad, a fight broke between the two groups out, as a consequence of which Imran Ali, armed with a pistol, shot at the right side of Ghulam Murtaza's neck; Dilbar armed with a pistol shot at Asad Ali on his left shoulder; Mithal armed with a gun shot at Asad Ali on his abdomen; Jabir, armed with a repeater, shot at Rafique Ahmed and injured his mouth, chest and both arms; Bilawal, armed with a repeater, shot the left and right side of Ali Muhammad's abdomen; Nazir Hussain, armed with a repeater, shot Amjad Ali's back and his right arm; Muhammad Urs, armed with a gun, shot at Abdul Qadir's left shoulder and right arm's wrist; Shahid armed with a pistol shot at Abdul Quddus on his buttock; Saddam Hussain, armed with a gun, shot at Ahmed Ali which hit his pelvis and ankle; Waheed armed with a hatchet hit Mazhar Ali on his right hand; Munawar armed with a repeater shot Syed Ahmed on his right arm; the pellets from Munawar's fire also hit Mukhtiar Khatoon on her left leg. Zahid accompanied by Qasim and Ali Gul gave danda blows to Muhammad Saleem, Ghulam Mustafa and Waqar Ali. The injured then went to the Chandka Medical College Hospital for treatment after which the FIR was lodged.

3. I have heard the learned counsel for the applicants as well as the learned counsel for the complainant and the learned Additional Prosecutor General and with their able assistance perused the record. My observations and findings are as follows.

4. It appears that two large groups of people; one comprising of 15 members and another of 14 members apparently got involved in a fight. The record reflects that the accused in this case have registered a counter F.I.R. (No. 18 of 2020 lodged by Dilbar Kalhoro) giving their own version of what happened, as well as the person(s) injured on their side by the complainant party. Unfortunately, *prima facie* it appears, that the police ignored the principles enunciated by the Hon'ble Supreme Court in the *Sughran Bibi* case, reported at **PLD 2018 SC 595** and registered two

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F.I.R.(s) for the same incident, instead of recording the counter versions of the parties through section 161, Cr.P.C. statements. Learned counsel for the complainant argued that only one individual of the accused party was injured. He also argued that the counter-blast FIR was merely an afterthought and was lodged with the specific intent of weakening the complainant's case. However, the questions of whether or not it was motivated by malice or was an afterthought require deeper appreciation of evidence and can only be determined at the conclusion of the trial. Hence, the fact as to who was the aggressor and who was the aggrieved is clouded with ambiguity at this stage. In this regard, the Hon'ble Supreme Court, in a judgment reported at **1996 SCMR 1845** has held that if it is unclear as to which party was the aggressor and which was the aggrieved, then bail may be granted. Reliance in this regard is also placed on **2011 SCMR 606** and **2020 SCMR 677**.

5. Upon a tentative assessment, I find it extremely odd that the complainant has been able to recollect the incidents of the previous day with exact precision and successfully managed to walk out unscathed from the quarrel. The said version sounds even more unbelievable when juxtaposed with the fact that it was the complainant with whom the accused had an axe to grind. Additionally, one would expect the complainant to be in possession of super human qualities for him to have memorized with such exactness all the details of an incident, including who hit who at what part of the body and with what weapon, which would have been disorienting to say the least.

6. The majority of the injuries sustained by the victims in the instant case have been categorized as *Ghayr-Jaifah Damiyah* which carries a potential sentence of one year and is a bailable offence. A few injuries have been categorized as *Shajjah-i-Khafifah* which carry a potential sentence of two years and is a bailable offence. Conversely, *Ghayr-Jaifah Hashimah* which carries a sentence upto five years and is a non-bailable offence. However, it does fall within the non-prohibitory clause of section 497, Cr.P.C. In short, most of the injuries complained of are bailable. Whereas, the remaining, though not bailable, fall within the non-prohibitory clause of section 497. Keeping the principle enunciated by the Honorable Supreme Court in **Tariq Bashir and 5 others Vs The State** (PLD 1995 SC 34), I find no exceptional or extraordinary circumstances

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to deny the applicants bail. Only one injury caused to Asad Ali i.e. *Shajjah-i-Hashimah* carries a potential sentence of up to 10 years, however, looking at the entire case holistically, it appears that the case is one of further inquiry.

7. Additionally, it is an admitted position that the parties have had an acrimonious relationship over the division of land. Therefore, at this preliminary stage, *malafide* on the part of the complainant to throw the net wide cannot be conclusively overruled.

8. In view of the above, Imran Ali, Jabir, Bilawal, Nazir Hussain, Muhammad Urs, Zahid and Qasim are admitted to post arrest bail subject to their furnishing a solvent surety in the amount of Rs.100,000/- each and a P.R. Bond in the like amount to the satisfaction of the learned trial court. Whereas, the interim pre-arrest bail granted earlier to Dilbar, Munawar and Shafi Muhammad stands confirmed subject to their furnishing of solvent surety in the amount of Rs.100,000/- each and a P.R. Bond in the like amount to the satisfaction of the learned Additional Registrar of this Court. The surety deposited earlier by the applicants for their interim pre-arrest bail may be adjusted accordingly. Further, the learned trial court is directed to conclude this trial within 5 months and report compliance through the learned Additional Registrar.