

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

1st CrI. Bail Appln. No.S-08 of 2021.

1st CrI. Bail Appln. No.S-72 of 2021.

Date

Order with signature of Hon'ble Judge

Mr. Mohammad Ali Memon, advocate for the applicants in both matters, along with applicants Amanullah and Nasrullah, who are on interim pre-arrest bail.

Mr. Azhar Hussain Abbasi, advocate for complainant in Cr. Bail Appln. No.S-08/2021.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of Hearing : 03.05.2021.

Date of decision : 7. .05.2021.

OS

ORDER

Omar Sial, J.: Both the captioned bail applications arise from the nominated accused in F.I.R. No.27 of 2020 registered under sections 302, 324, 114, 148, 149, P.P.C. at the Lodra Police Station. The applicants Amanullah Jafferri and Nasarullah Jafferri (in CrI. Bail Application No.8 of 2021) have sought pre-arrest bail, whereas Ali Nawaz Jafferri, Wakeel Jafferri and Abdullah Jafferri (in CrI. Bail Application No.72 of 2021) have sought post arrest bail. Their respective applications seeking bail were dismissed earlier by the learned Sessions Judge, Shikarpur on 5-12-2020 and by the learned 1st Additional Sessions Judge, Shikarpur on 3-2-2021, respectively.

2. Abdul Razzak Jafferri on 7-8-2020 at 0500 hours lodged the aforementioned F.I.R. reporting an incident which had occurred on 29-7-2020. He narrated that he has had a dispute with the family of Akbar Jafferri over animals. He along with 4 others was grazing his cattle when 10 persons appeared, who were all identified by him. The applicants were allegedly amongst the 10 persons. A fight broke out between the two parties which resulted in injuries and the death of one of the members of the complainant party i.e. Ali Bux. Abdul Razzak Jafferri's attribution of roles to the members of the accused party, as stated in the F.I.R., was as follows:

<u>Accused</u>	<u>Role attributed</u>
Mohammad Akbar Jafferri	Inflicted a blow to Ali Bux (deceased) with the blunt side of his hatchet.

OS

Himmat Ali Jafferi	
Ali Mardan	Inflicted a blow to Sanaullah with the blunt side of his hatchet.
Wakeel Jafferi (applicant)	Hit Salahuddin with his stick.
Khan Mohammad	Was present with a stick.
Amanullah Jafferi (applicant)	Was present unarmed.
Khadim	Instigated the others.
Abdullah Jafferi (applicant)	Was present with a stick.
Nasarullah Jafferi (applicant)	Hit Abdul Samad with his stick.
Ali Nawaz Jafferi (applicant)	Hit Rani with a stick.
	Was present with a stick.

3. I have heard the learned counsels for the applicants as well as the complainant and the learned D.P.G. With their able assistance, I have also perused the record. My observations and findings are as follows.

4. Yet another one of those cases where the complainant stands and observes diligently as to which of the accused hit which member of the complainant party on which part of his body yet miraculously while the others are injured, he remains unscratched. Prima facie, it appears that the complainant has thrown the net wide. Malafide, at this stage, cannot thus be ruled out conclusively.

5. The learned counsel for the complainant argued that the complainant was busy in attending to the injuries of the various members of his party who were allegedly hurt in the incident and as such the 8 day delay in lodging the F.I.R. resulted. Upon a tentative assessment, a weak and improbable explanation has been given as to the reasons for the delay. The complainant himself was not injured and apart from Ali Bux, who might have sustained a serious injury, there was nothing stopping the others from reporting the incident to the police. This fact coupled with the fact that it was the accused party which had lodged F.I.R. No.24 of 2020, the very next day of the incident i.e. 30-7-2020, for the death of one of its own in the same incident does not shed a good light on the intentions of the complainant to lodge the present F.I.R. Once again, malafide on the complainant's part cannot be conclusively ruled out. It appears that the police did not take into account the command of the Honorable Supreme Court in the *Sughran Bibi* case that 2 F.I.R.'s should not be registered for the same incident. It was incumbent upon the police to record the version of the complainant for the same incident in section 161 Cr.P.C statements, however a separate F.I.R. was lodged. In-charge of police stations must strictly comply with the principles laid down in the *Sughran Bibi* case and ensure that their subordinates are well aware of the same.

6. Coming to the roles attributed to the applicants, I notice that Wakeel Jafferi and Ali Nawaz Jafferi have been attributed mere presence on the spot

and no overt role. Amanullah Jafferi is assigned the role of instigation, whereas Abdullah Jafferi and Nasarullah Jafferi have been assigned the role of hitting Abdul Samad and Rani with a stick. The medical report pertaining to Abdul Samad dated 5-8-2020 reveals that no visible injury or mark of violence was seen on his body, whereas the medical report pertaining to Rani dated 11-8-2020 also does show mere swelling and a light abrasion on her arm. Prima facie, the medical reports do not reconcile with the ocular version in some other aspects as well.

7. Whether the applicants were even present at the scene of occurrence and even in they were whether they played any role in the incident and whether this case has been lodged solely as a counter-blast to F.I.R. No.24 of 2020 are all questions that require further inquiry. The question of common intention or common object of the accused, in the circumstances of the present case, can also only be determined at trial.

8. In view of the above observations, the interim pre-arrest bail granted to Amanullah Jafferi and Nasarullah Jafferi (in CrI. Bail Application No.8 of 2021) stands confirmed on the same terms and conditions, whereas Ali Nawaz Jafferi, Wakeel Jafferi and Abdullah Jafferi (in CrI. Bail Application No.72 of 2021) are admitted to post arrest bail subject to their furnishing solvent sureties in the sum of Rs.100,000/- each together with a P.R. Bond in the like amount to the satisfaction of the learned trial court.


7/5/21
JUDGE