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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Cr. Bail Application No. S- 473 of 2023.

Applicants : Muhammad Usman & Khan Muhammad present (on bail), through Mr. Muhammad Afzal Jagirani, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Complainant : Bahawal Bhutto, through Mr. Naushad Ahmed Bhutto, Advocate.

1st Crl. Bail Application No. S- 575 of 2023.

Applicant : Dur Muhammad Panhwar, through Mr. Muhammad Afzal Jagirani, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Complainant : Bahawal Bhutto, through Mr. Naushad Ahmed Bhutto, Advocate.

Date of hearing : **01.03.2024.**
Date of Order : **01.03.2024.**

ORDER

Muhammad Saleem Jessar, J.- Both these bail applications are interconnected having been filed in one and same FIR bearing Crime No.164/2023, registered at P.S Saddar, Jacobabad, for offence under Sections 324, 34, PPC.

2. After having been declined the concession of pre-arrest bail by the trial Court/ Sessions Judge, Jacobabad vide order dated 22.08.2023, whereas, applicant Dur Muhammad's plea for his release on bail has been declined by the same Court vide order dated 23.09.2023, therefore, they have approached this Court with same pleas.

3. Facts of the prosecution are mentioned in detail in the memo of bail applications, therefore, the same need not to be reproduced hereunder.

4. Learned Counsel for the applicants submit that the applicants have been assigned general role of causing firearm injuries to injured Hadi Bux; however, injuries sustained by him have not been opined by the MLO to be fatal for his life and carry maximum punishment of 05 years. As far injuries No.1 and 2 are concerned, those have been declared as *Jurh Jaifah* falling under Section 337-D, PPC, however, both have not been specified against any of the accused. Besides, the punishment provided under the law is *Arsh* equal to 1/3rd of *Diyat* coupled with the sentence which may extend to 10 years, therefore, submits that the case against the applicants requires further enquiry. He, therefore, submits that the applicants may be granted bail. In support of his contentions, he places reliance upon the cases reported as 2021 SCMR 1467, 2021 SCMR 1287, 2021 SCMR 1295, 2022 SCMR 186, 2022 SCMR 198 and 2023 SCMR 1397.

5. Learned DPG opposes the bail applications, on the grounds that the applicants are nominated in the FIR with specific role of causing firearm injuries to injured Hadi Bux and offensive weapon has also been recovered from applicant Dur Muhammad. He, however, could not controvert the fact that punishment provided by law for Section 337-D, PPC is *Arsh* equal to 1/3rd of *Diyat* and sentence of imprisonment which may extend to 10 years.

6. Learned Counsel for the complainant also opposes the bail applications, on the grounds that applicants have caused firearm injuries to injured Hadi Bux, who remained as indoor patient for sufficient time. The injuries allegedly sustained by him carry maximum punishment of 10 years, therefore, applicants are not entitled for the bail. As far as misuse of the concession of interim pre-arrest bail is concerned, he admits that applicants Muhammad Usman and Khan Muhammad after furnishing surety before this Court have joined the investigation and have not misused the concession so extended to them.

7. Heard learned Counsel for the parties and perused the material made available on record.

8. No doubt the applicants are nominated in the FIR and are shown to be armed with firearm; nevertheless, it is also an undeniable fact that general role of making fires is alleged against them. As far as injuries sustained by injured

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Hadi Bux are concerned, those have not been opined by the MLO to be fatal for his life and same carry maximum punishment of 05 years. The injuries No.1 and 2though have been declared as *Jurh Jalfah* falling under Section 337-D, PPC, however, same have not been specifically attributed against any of the accused persons. Even otherwise, the punishment provided under the law for offence u/s 337-D,PPC is *Arsh* equal to 1/3rd of *Diyat* and the sentence of imprisonment extending upto 10 years, therefore, the alleged offence, in my humble view does not attract the prohibition as contained under Section 497, Cr.P.C and the case against the applicants requires further enquiry. After grant of interim pre-arrest bail, no complaint against applicants Muhammad Usman and Khan Muhammad regarding misuse of such concession has been made. The case has been challaned and applicant Dur Muhammad, who is confined in jail, is not required to police for any investigation. So far recovery of crime weapon from applicant Dur Muhammad is concerned, in view of no specific injury assigned to him such recovery at present is of no consequence. It is well-settled principle that every accused is to be presumed as blue-eyed child of law until and unless he is found to be guilty of the charge and law cannot be stretched upon in favour of the prosecution, particularly at bail stage, if any benefit of doubt arises, it must be extended in favour of the accused for the purpose of bail. Reference can be had from the case of *Amir v. The State* **(PLD 1972 Supreme Court 277)**.

10. Accordingly and in view of above discussion, I am convinced that the applicants have made out their *prima facie* case for grant of bail. Therefore, both these bail applications are allowed. Interim pre-arrest bail granted earlier to applicants Muhammad Usman and Khan Muhammad is hereby confirmed on same terms and conditions; whereas, applicant Dur Muhammad Panhwar is directed to be released on bail on his furnishing surety in the sum of Rs.100,000/- and P.R. Bond in the like amount to the satisfaction of trial Court.

JUDGE

Qazi Tahir PA/*