

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

Crl. Bail Appln. No. S- 68 of 2019.

Date of hearing	Order with signature of Judge
21.02.2019.	

1. For orders on office objections.
2. For hearing of bail application.

Mr. Nazir Ahmed Chacher, Advocate for applicants.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.
Complainant is present in person.

Through this bail application, applicants Munawar alias Ibrahim, Gulsher, Jan Muhammad alias Janu, Barkat, Waryo Faqeer alias Tanveer, Saeed alias Tahir Muhammad, Mir Hassan and Munawar seek pre-arrest bail in Crime No.01/2019, registered with P.S Chak, District Shikarpur, for offences punishable under Sections 147, 148, 149, 114, 337-A (ii), 337-F (i), 337-H (2), 506 (2) P.P.C.

The bail application moved by the applicants before the Court of learned 1st Additional Sessions Judge, Shikarpur, was declined by means of Order dated 31.01.2019.

Per F.I.R, the allegation against applicants is that, on 01.01.2019, they in company of some other co-accused made attack upon complainant party thereby causing "*lathi and hatchet*" blows to complainant and P.Ws Imamuddin, Muhammad Ismail, Munawar Ali and Tarique. The arms bearing accused are alleged to have made aerial firing. The motive for the alleged incident, as set-out in the F.I.R is dispute between the parties over landed property.

Learned counsel for applicant mainly contended that, F.I.R is delayed for two days; parties are already inimical towards each other over landed properties and that the except Section 337-A (ii) and 506 (2) P.P.C, rest of the Sections applied in the F.I.R are bail-able, while Sections 337-A (ii) and 506 (2) P.P.C., do not fall within prohibitory

clause of Section 497 Cr.P.C. Per learned counsel, it is well settled law that in the cases which do not fall within prohibitory clause of Section 497 Cr.P.C, the grant of bail is rule and refusal is an exception. In support of his contention, learned counsel has relied upon case of *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), *Riaz Hussain and others versus The State and others* (2014 YLR 1120 Lahore). The learned counsel further submitted that, co-accused Jinsar has already been granted post-arrest bail by learned trial Court. He lastly contended that, the applicants have joined the trial and are regularly attending the trial Court and prayed for confirmation of interim pre arrest bail granted to applicants.

Learned D.P.G. appearing for the State opposed grant of bail in favor of the applicants on the ground that they have been nominated in F.I.R with specific role of causing injuries to prosecution witnesses.

Record reflects that, the parties are already inimical towards each other and the F.I.R is also delayed two days. Sections applied in the F.I.R, except 337-A (ii) and 506 (2) P.P.C., are bail-able, while these two sections do not carry punishment beyond limits of prohibitory clause of Section 497 Cr.P.C. In the cases not falling within prohibitory clause of Section 497 Cr.P.C., the grant of bail is rule and refusal is an exception as has held by the Hon'ble Apex Court in its numerous judgments. The Hon'ble Supreme Court of Pakistan, in case of *Muhammad Tanveer v. The State and another* (*supra*) has observed as under:

"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a Constitutional Court to deal with intricate question of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation. That prisons were accommodating convicted and under-trial prisons more than double

their capacity and State authorities were involved in transporting such prisoners from the prisons to the Court premises on daily basis for Court hearings which involved risks and extra expenditures from the public exchequer and that grant of bail in offences not falling within the prohibitory limb of S. 497, Cr.P.C. was a rule and refusal an exception, therefore, all subordinate Courts, Special Courts and Tribunals should follow said principle in its letter and spirit."

Moreover, co-accused Jinsar has been granted post arrest bail by learned trial Court and case of some of present applicants is identical to that of co-accused Jinsar. The applicants are already joined the trial and attending the trial Court.

Accordingly, in view of above position and the dictum laid down by Hon'ble Supreme Court in case of *Tariq Bashir v. The State* (PLD 1995 S.C 34) and *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), the instant application stands allowed. Consequently, interim pre-arrest bail already granted to applicants vide Order dated 06.02.2019, is hereby confirmed on same terms and conditions. However, the complainant/ prosecution would be at liberty to move for cancellation of bail of applicants, if some cogent material comes on record.

JUDGE

Ansari/*