

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 05 of 2017.
Crl. Bail Appln. No. S- 06 of 2017.

Date of hearing
06.03.2017.

Order with signature of Judge

Mr. Habibullah G. Ghouri, Advocate for applicants in both bail applications

Mr. Abdul Rasheed Soomro, Advocate for complainant.

Mr. Sardar Ali Rizvi, A.P.G.

Muhammad Saleem Jessar-J: By this common order, I propose to dispose of above captioned two bail applications bearing Crl. Bail Appln. No. S- 05/2017 under Section 498, 498-A Cr.P.C filed on behalf of applicants Shamasuddin alias Shaman, Ameer Ali, Ayaz Ali, Aijaz Ali, Ashique Ali, Punhal, Ali Gohar and Bashir Ahmed and Crl. Bail Appln. No. S- 06/2017 under Section 497 Cr.P.C filed on behalf of applicants Quran and Raees; as both the applications arise out of same F.I.R bearing Crime No.24/2016 registered with P.S Nao Goth, District Dadu, under Sections 347, 348, 347, 348, 349, 452, 337-A (i) and 337-F (i) P.P.C. Both these bail applications are arisen out of one and same impugned order dated 31.12.2016, and same has been impugned before this Court by means of captioned bail applications.

The case of prosecution is that on 22.12.2016 complainant Mst. Rasheeda Bano appeared at P.S Nao Goth, and lodged F.I.R in the following wording:

"It is complained that I reside on the address mentioned above. About a week back Shaman Lakhair came to my house and told me that the house wherein I was residing has been sold out to him by my brother Haneeed and he has received the money. I told him that the house belongs to my father and my brother has no authority to sell the same without my consultation and I asked him as to why they paid money to him and I have arranged that amount and I will return the same to you on 20.12.2016 and on this he got annoyed and asked me to vacate the house in two days, else it would not be good. On 17.12.2016 in the morning I alongwith the inmates, was available in my house alongwith my cousin Irfshad son of Ghulam Nabi Narejo and my sister Sadiya wife of Nisar Ahmed Narejo and

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my cousin Noor Jehan daughter of Ghulam Nabi Narejo, when at about 6.00 a.m. accused Shaman armed with gun, Qurban armed with gun, Ameen armed with repeater, Raees armed with hatchet, Aijaz with hatchet both sons of Koral Lakhair, Ayaz Ali armed with gun, Nuban Lakhair with lathi, Punhal son of Khan Lakhair with hatchet, Gohar and Bashir both sons of Mehmood Lakhair with "Dandas" all resident of village Nao Goth, Taluka Melhar trespassed in our house and they told me that they had asked to vacate the house but I was still there and in the meantime, accused Ayaz Lakhair caused gun butt blow on the head of my sister Sabiya Khatoon and accused Shaman Lakhair caused gun butt blows to my cousin Noor Jehan on her forehead and other accused caused gun butt and "Danda" blows to us and they took cash Rs.500,000/- from the box lying in the house and so also took away the gold ornaments and documents, which were lying in the box and then accused pushed us out from the house and occupied the same. Thereafter, I alongwith my injured sister and cousin came to Police station and obtained the letter for treatment and I left them in the hospital and after their treatment, now I have come to lodge report that above named accused on show of weapons trespassed in my house and have illegally occupied the same. I am complainant investigation may be made."

Learned counsel for the applicants mainly contended that, the very F.I.R of the case is delayed for five days and the explanation furnished for such inordinate delay is not satisfactory and plausible. Learned counsel further submitted that as per contents of F.I.R that after the incident complainant went to Police station and obtained letter for medical treatment, but she did not register the F.I.R, nor recorded any N.C report. He further contended that there are general allegations against all the accused except Ayaz and Shaman, against whom allegation of causing injuries to PW Mst. Sabiya and Mst. Noor Jehan is attributed. Learned counsel further contended that the injuries on the person of injured are simple and superficial in nature. Per learned counsel the house, which is bone of contention in this matter, actually belongs to Hameed and Muhammad Ameen, the brothers of complainant and it does not belong to complainant and the complainant in league with area police, has registered this false case by using influence of her husband, who is serving in Pakistan Army. Learned counsel placed on record certified copy of case diary dated 20.01.2017

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showing presence of applicants/ accused before 2nd Civil Judge and Judicial Magistrate, Mehar, where the case is pending for preliminary proceedings in terms of Judgment reported in PLD 2010 S.C 585; same is taken on record. Learned counsel lastly submitted that the applicants who are on interim pre-arrest bail have joined the trial and attending the trial Court regularly and that no purpose would be served, if their bail plea is refused and they are taken into custody.

Learned APG appearing for the State has referred to the medico legal certificate issued in favor of injured/PWs Mst. Sabiya Khatoon, Mst. Noor Jehan and has stated that injuries as per final medico legal certificate are bailable and even are not grievous in nature. Learned APG further gone through Section 397 P.P.C, which is punishable upto seven years. He further contended that there is no recovery of any incriminating article including robbed articles and the cash. Besides, the F.I.R is also delayed for about five days, therefore, in view of above lacunas in the prosecution he very candidly has extended his no objection to grant of applications.

On the other hand counsel for complainant has vehemently opposed the bail applications by contending that accused are nominated in F.I.R with specific role of causing injuries to the injured/PWs and further submits that they did not deserve any concession of bail and the trial Court has rightly rejected their bail pleas and therefore, he has opposed the applications. In support of his contentions, he has placed reliance upon case of *Muhammad Usman and 2 others v. The State* (1995 P.Cr.LJ 1569), *Muhammad Nasir Iqbal v. The State* (2000 P.Cr.LJ 112), *Ahmad Khan and others v. The State* (2006 MLD 1041), *Haniza Basil v. The State* (2014 P.Cr.LJ 807) and *Muhammad Zafar alias Zaffar Iqbal v. The State* (2001 MLC 287).

I have heard the arguments of either side, perused the police file with assistance of learned counsel for respective parties and have gone through the material made available before me.

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Perusal of record shows that the house belonging to the complainant was sold out by her brothers and such agreement for sale was executed; copy of the same is available in the file. As for as injuries allegedly sustained by the injured/ PWs are concerned; same have been opined by the medico legal officer as simple and bailable one and the punishment provided for the same is for two years. Nothing has been recovered from the possession of applicants/ accused to substantiate claim of complainant party. The case has been challaned and F.I.R is also delayed for five days, for which there is no plausible explanation. In criminal cases, the delay in filing F.I.R ever found fatal for the prosecution. It is settled law that bail cannot be withheld as premature punishment and the offence with which the applicants are allegedly charged does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In view of golden dictum/ guiding principles of Hon'ble Supreme Court from the case of Tariq Bashir and 4 others v. The State, the case against applicants become case of further enquiry and they are entitled for concession of bail. Consequently, both the bail applications are allowed. The interim pre arrest bail granting order dated 06.01.2017 in Crl. Bail Appln. No. S- 05/2017 is confirmed on same terms and conditions; whereas applicants/ accused Qurban and Raees in Crl. Bail Appln. No. S- 06/2017 are directed to be released on bail upon their furnishing solvent surety in the sum of, Rs 100,000/- (One hundred thousand rupees) each and P.R. bonds in the like amount to the satisfaction of learned trial Court.

Needless to mention that observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE
S. G. S.

Yasir