

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Bail Appln. No.S-979 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

02.12.2016.

*Mr. Raja Hans Raj Naurang, Advocate for applicant.*  
*Mr. Shahzad Saleem Nahiyoon, Assistant P.G.*

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**MUHAMMAD FAISAL KAMAL ALAM- J:-** This is a Criminal Bail Application moved by applicant/accused Jameel Ahmed Memon S/o Kamaluddin, arising out of Crime No.194/2016, registered at Police Station A-Section, Dadu, under Sections 337-F(i), 337-F(v), 337-A(i), 147, 148, 149 & 504 PPC, after his bail plea has been rejected by the Court of the learned IInd Additional Sessions Judge, Dadu by order dated 12.11.2016.

2. The facts related for deciding the present bail application are that the complainant Muhammad Yaqoob S/o Haji Shamsuddin Memon lodged the present FIR, whereunder he has stated that he is a businessman and his son Muhammad Arif had contracted a marriage in the year 2008 with Mst.Shazia daughter of Abdul Rasheed Memon and out of said wedlock he has one daughter namely Maryam, aged about 05 years. Due to matrimonial dispute, the said Mst.Shazia left her husband's house and settled in her parents' house. Thereafter, in the year 2012 she obtained divorce by way of *Khulla* from the concerned Family Court. As per direction of the Family Court, complainant's son Muhammad Arif used to meet with her minor baby Maryam on a monthly basis at the Family Court. One day the complainant side met with Abdul Rasheed Memon in Family Court premises and demanded that 15 Tolas of Gold and other dowry

articles should be returned. On 05.07.2016 at 04:30 p.m the complainant alongwith his sons Muhammad Maroof and Imran Khan went to receive Gold and other articles from Jameel Ahmed Memon (the accused) and when they reached at the house of Jameel Ahmed Memon and knocked the door, who instantly came out of his house and told the complainant party to stay at the door. In the meantime, the complainant saw that (1) Jameel Ahmed Memon (2) Muhammad Saleh, both sons of Kamaluddin, having iron rod and stick, respectively, in their hands and (3) Mansoor and (4) Mudassir, both sons of Jameel Ahmed Memon, having sticks in their hands as well as two unknown persons with pistols in their hands. Applicant/accused Jameel Ahmed Memon, while abusing complainant party, caused iron rod blow to complainant's son Muhammad Maroof, accused Muhammad Saleh pushed back complainant who fell down, while other accused also hit complainant's son with iron rod, stick and pistol butt. The complainant party raised cries, which attracted the nearby people, who intervened and rescued the complainant party, hence they filed the present FIR.

3. Learned Counsel for the applicant/accused contended that applicant/accused is innocent and has been falsely implicated in instant crime due to enmity on account of matrimonial issue, which is obvious from the FIR. He further contended that the incident took place on 05.07.2016 and the FIR has been lodged on 11.07.2016 by the complainant party, which clearly shows that there is a delay of 06 days in lodgment of FIR and such delay has not been plausibly explained by the complainant, but it shows that the FIR was lodged as an afterthought. He further submits that all the Sections areailable except Section 337-F(v) PPC for which punishment is 05 years and that the applicant/accused has no past criminal record and he is regularly facing his trial before the concerned Trial Court.

4. On the other hand, the learned A.P.G has stated that challan has been submitted in the trial Court. He did not dispute the fact that there is no previous criminal record of the present applicant/accused nor it has been disputed that primarily the alleged incident, which led to the filing of FIR in Crime No.194/2016, was on account of matrimonial dispute between the children of present applicant/accused and the complainant party and these facts are also mentioned in the FIR.

5. Heard the learned Counsel for the applicant/accused as well as the learned A.P.G for the state and has carefully examined the material available on record.

6. It is an undeniable fact that the incident took place on account of matrimonial dispute between the present applicant/accused and the complainant's son (Muhammad Arif) was married with Mst. Shazia, who is niece of present applicant/accused and that the delay of six days in lodgment of FIR can also not be denied, which itself speaks that there might be some malice on the part of the complainant. The co-accused in the present FIR have already been admitted on bail by the learned Trial Court. All the Sections, under which the present applicant/accused is booked, are bailable except Section 337-F(v) PPC, wherein the punishment even if awarded would be 05 years, which also does not fall within the prohibitory clause of Section 497 of Cr.P.C. The prosecution still has to prove the guilt of the present applicant/accused in the pending trial before the concerned Court, for which the applicant/accused is regularly attending the trial and has also cooperated with the investigation. Therefore, the case of the present applicant/accused requires further inquiry falling within the ambit of Section 497(2) Cr.P.C. Another reason for confirming the bail is that if the accused, in view of the above discussion, is sent to jail, then he is likely to suffer humiliation. Hence, the interim pre-arrest bail already

granted to the applicant/accused by this Court by order dated. 17.11.2016 is hereby confirmed on same terms and conditions with the directions to the applicant/accused to face the Trial before the concerned Trial Court. However, it is clarified that the observations made here-in-above are tentative in nature and will not in any way influence the merits of the case during trial and/or decision of the Trial Court. With these observations and directions, the present criminal bail application stands disposed of.

**JUDGE**

Shahid