

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Appln. No.S-525 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING.

17.08.2017.

Mr. Faqir Rehmatullah Hisbani, Advocate for applicant.
Mr. Muhammad Arshad S. Pathan, Advocate for complainant.
Mr. Erum Ahmed D.D.P.P.

ORDER

ABDUL MALIK GADDI, J:- Applicant/accused namely *Muhammad Umer S/o Arif Ali Shaikh* is present on interim bail granted to him by this Court vide order dated 28.05.2014. Today this bail application is fixed for confirmation or otherwise.

2. The allegations against the applicant/accused are that on 19.03.2014, when the complainant reached at the shop of Irfan Ali Mohammad Ali Brothers General Store Unit No.8 at 3:00 p.m. In the meanwhile, Usman Ali armed with Hockey, Arif Ali, Ahsan Ali armed with iron rods and their sons namely Motabar Ali, Mohsin Ali, Arshan Ali, Shani Pasran S/o Usman Ali, Mohammad Ahmed, Mohammad Umer, Zia Pasran S/o Arif Ali and Mohammad Zubair S/o Ahsan Ali, entered in the shop while Irfan Ali and Ahsan Ali with intention to commit murder, caused iron rod blows on the head of Irfan Ali and blood started oozing, whereas other accused started to beat the complainant and his nephew Kamran Bashir and Faizan with Danda and caused damages in the shop. In the meanwhile accused Arif Ali and Usman Ali snatched Rs.1,65,000/- from injured Irfan and Rs.15,000/- and one mobile phone from his nephew Kamran Bashir and while going, accused persons issued threats if they do not withdraw from civil suit.

3. It is stated by learned Counsel for the applicant that the case against the applicant is false and has been registered due to enmity over the property. He further submits that civil dispute amongst the parties itself admitted in the F.I.R., as such false implication of the applicant/accused in the case cannot be ruled out and the matter requires further inquiry. He further

submits that it is the matter of fact that the complainant and the accused party are belonging to the same family and they all are brothers and nephews but interestingly in the F.I.R. the complainant has stated that the accused party has given him blow of iron rods on his head and he was referred to the Hospital but in the F.I.R. no any section of injury has been mentioned. He further submits that actually the dispute between the applicant/accused and the complainant is over the property, which pertains to purely civil nature and admittedly the civil suits filed by both sides are pending adjudication in the Court of Law and some scuffle has taken place between the parties but the complainant cooked a false story in order to harass and blackmail the accused party. It is further stated that the F.I.R. is delayed for about one day and no plausible explanation is given by the prosecution, which reveals that the F.I.R. has been lodged after due deliberation and consultation and the same is tainted with malice, false, fabricated and concocted one. It is also stated by learned Counsel for the applicant that the applicant is neither desperate nor dangerous or hardened criminal and is not previously convict, therefore, the case of the applicant is of further inquiry. Learned counsel for the applicant/accused has placed on record the certified true copy of the order dated 19.06.2017 passed by this Court in Criminal Miscellaneous Application No.387 of 2016, in which the proceedings in the F.I.R. No.62 of 2014 of P.S A-Section, Latifabad, Hyderabad are hereby stayed and the applicant is regularly attending this Court. He lastly submits that the proceedings in F.I.R. No.62 of 2014 (present case) have also been stayed, therefore, the bail to the present applicant under the aforementioned facts and circumstances may be confirmed.

4. It appears from the record that the Vakalatnama of Mr. Muhammad Arshad S. Pathan is on record. Notice of this bail application was issued to Mr. Muhammad Arshad S. Pathan, Advocate for the complainant for today, which was duly served upon him and this fact is evident from the endorsement of Bailiff dated 03.08.2017 available on record. However, today he appeared but thereafter he left the Court without arguments by saying that he is not an Advocate for the complainant but his junior Mr. Sajjad Ali is Advocate for complainant. Mr. Sajjad Ali, Advocate is also absent.

5. Learned D.D.P.P has half-heartedly opposed this bail application.

6. I have given my anxious thoughts to the contentions raised at the bar and perused the record. It is an admitted fact that the parties are already in dispute over the property and in this regard, the civil suits are pending against each other. It further reveals from the record that the applicant/accused is appearing before this Court regularly. Learned Counsel for the applicant has placed on record the certified true copy of the order dated 19.06.2017 passed in Criminal Miscellaneous Application No.S-387 of 2016. For the sake of convenience, it would be appropriate to reproduce the operating part of the said order, which reads as under:-

“Perusal of the F.I.R. and documents attached alongwith this application reflects that the dispute is between brothers and civil litigation is pending. Accordingly, the proceedings emanating from F.I.R. No.62/2014 at P.S A-Section Latifabad, Hyderabad are hereby stayed. Petitioners are not required to attend the Court till further orders. At this juncture, learned Counsel for the complainant contends that there are counter cases and the respondents are also attending the Trial Court by travelling from Karachi to Hyderabad, hence it would be in the interest of justice to stay the proceedings of that Court as well.”

7. From the perusal of the above order, it reveals that the proceedings in the present case have already been stayed and the applicant is attending the Court without any trial before the Trial Court. It has also been brought on record that the present applicant has also registered the F.I.R. being Crime No.64 of 2014 at P.S A-Section Latifabad, Hyderabad, against the complainant party, in which they are already enjoying bail. It also appears that there are counter cases of the parties against each other and it is yet to be determined at the time of trial that which party is aggressor and the fate thereof is yet to be determined at the trial and till then the case of the applicant/accused requires further probe.

8. In view of the above facts and circumstances, I have come to the conclusion that the applicant/accused has made out a case for his confirmation of bail. I, accordingly confirm this bail application on the same terms and conditions with direction to the applicant to appear before the Trial Court when notice/summon is issued to him.

Bail application stands disposed of.

JUDGE