

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

Cr. Bail Appln. No.S-893 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 19.02.2019.
Date of order: 19.02.2019.

Applicant present on interim pre-arrest bail.
Mr. Tarique Mehboob, Advocate for applicant.
Mr. Shahzado Saleem Nahiyoon, Deputy Prosecutor General
Complainant in person.

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ZULFIOAR AHMED KHAN, J:- Through instant bail application, applicant Umar Farooque seeks pre-arrest bail in Crime No.58/2018 registered at Police Station Sinjhoru for offences punishable under Section 337-A(i), 337-A(iv), 337-F(i), 337-L(ii), 506(2), 147, 148, 149 PPC.

2. Laconic facts of the prosecution case as unloaded in the F.I.R. by complainant Babar Ali registered on 23.08.2018 at 1640 hours are that Ghulam Farooque Jat, Umar Farooque Jat, Umar Farooque Jat, Sufyan Farooque Jat, and their servants Fathoo Menghwar and Rmoo Kolhi used to raise commotion and hurle abuses till odd hours while assembling on floor opposite to house of complainant in front of Masjid, to which complainant party restrained them to act so but they replied that they would see the complainant, restraining them. On 21.08.2018 at night time, complainant alongwith his brother Zakir Ali, riding on motorcycle, proceeded to the house by leaving their Poultry Farm and at 10:30 P.M. when arrived in the street of the house, noticed the presence of Ghulam Frooque Jat, Umer Jat armed with hatchets, Sufyan Farooque Jat, Fathoo Menghwar and Ramoo Kolhi equipped with lathies, in the light of bulb, who stopped the motorcycle then Ghulam Farooque by raising hakals caused hatchet blow to

complainant on his head, Umar Farooque also inflicted hatchet blow to brother of complainant namely Zakir Ali, to which complainant party then all accused started causing lathies and backside of hatchet blows, meantime uncle Ghulam Abid arrived there, who saved the complainant party by placing request of mercy then all accused went away towards their houses by extending threats of murder. Complainant and his brother sustained injuries on head and other parts of the bodies. Thereafter uncle Ghulam Abid brought the complainant party to Taluka Hospital Sinjoro by informing the police, who arrived there and issued letter for treatment then they were referred to Hyderabad where they got treated while Zakir Ali is still confined at the bed. Doctor discharged the complainant then he appeared at Police Station and lodged the instant F.I.R. that aforesaid accused due to restraining to hurle abuses and raise commotion in the street, accused persons being armed with lathies and hatchets got injured the complainant party by causing hatchet and lathies blows.

3. Learned counsel for the applicants *inter alia* contends that applicant is innocent and has falsely been implicated in the case in hand on account of old political enmity and prior to registration of instant FIR, applicant party lodged NC report; FIR is lodged with delay of 02 days without explanation; alleged incident took place in the cattle pond of accused but complainant malafidely shown the place of incident in front of his house where no blood was found; all co-accused have been granted bail by learned Ist. Additional Sessions Judge, Sanghar, therefore, rule of consistency is considerable in the instant matter; no overact or specific role assigned to him in commission of present crime. He further contended that medical evidence is contradictory to the ocular evidence; all family members of complainant party were robbed in the instant crime in order to take revenge of old political enmity; no independent person has been cited as witness, though, place of incident is populace; applicant has no

previous criminal record; investigation is completed and that the applicant has not misused the concession of bail as he is constantly appearing before trial Court. Lastly, he prays for confirmation of interim pre-arrest bail. In support of his arguments, learned counsel for applicant relied upon case laws reported at 2009 PLD 312(b) Lahore, 2007 P.Cr.L.J 513 (Karachi), 2017 MLD 44 (Lahore), 2005 MLD 535 (Lahore), 2005 P.Cr.L.J 698 (Karachi), 2002 P.Cr.L.J 791, 2017 PLD 730 (S.C), 2012 SCMR 887 (S.C), 2009 MLD 929 (Lahore) and 2004 P.Cr.L.J 1860 (Lahore).

4. Learned D.P.G. vehemently opposed to confirmation of bail plea on the ground that accused was properly identified, shown armed with hatchet and is named in the F.I.R. with specific role of causing injuries to complainant party. He further contended that offence with which applicant is charged, falls within the prohibitory clause and that injured Zakir Ali was caused severe injuries, who is not stable and still confined to bed, therefore, applicant is not entitled for any concession.

5. I have heard learned counsel for the parties and gone through the material available on record carefully.

6. On bare scrutiny of the record, it transpires that applicant was rightly identified by the complainant party at the place of occurrence in the light of bulb having armed with hatchet, who is also named in the F.I.R. and specific role of causing injuries to complainant party is assigned to him in commission of the alleged crime. The delay has specifically been explained by the complainant party as they were busy in the treatment. As per Final Medicolegal Certificate issued by Doctor, injuries sustained by injured Zakir Ali are declared as 337-A(iv), 337-F(i) 337-L(ii) QDO, however, Section 337-A(iv) QD is punishable upto 10 years and falls within the prohibitory clause of Section 497 Cr.P.C. even said injured is still not come out from the

injuries and confined to bed. All the PWs have fully supported the version of complainant and no specific enmity against them is alleged by the applicant so also medical evidence also supports the version of complainant. No material or any document has been brought on record to show the false involvement of the applicant/accused in this case. The case law cited by learned counsel for the applicant are distinguishable from the facts of this case and not helpful to the case in hand.

7. In view of what has been discussed above, I am of the humble view that the applicant/accused has failed to make out a tentative assessment for grant of pre-arrest bail at this stage. Accordingly, the instant bail application having no merits for consideration was dismissed by my short order dated 19.02.2019 and the interim pre-arrest bail already granted to applicant/accused vide order dated 04.10.2018 was recalled. These are the reasons whereof.

JUDGE

Asif I. Khan