

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

Cr. Bail Application No.S-507 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 14.02.2019

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Applicants are present on interim bail.

Mr. Nisar Ahmed S. Chandio, Advocate for Applicants.

Mr. Safdar Ali Charan, Advocate for Complainant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General.

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Zulfiqar Ahmad Khan, J: Through the instant Criminal Bail Application, applicants seek pre-arrest bail in Crime No.34 of 2018, registered at Police Station Rukkan District Dadu U/S 324, 337-A(i), F(i), 147, 148, 149, 504 PPC.

2. Concisely facts of the case are that on 24.05.2018, complainant Zuhaib Ali lodged an F.I.R bearing Crime No.34 of 2018, stating therein that he is doing labour and about one year ago, he has gone to his cousin Irfan Ali's marriage ceremony where some harsh words were exchanged with accused persons, on which they became annoyed and stated that they will take revenge from the him. On 20.05.2018, complainant alongwith his cousin Irfan Ali and brother Amanullah after performing Namaz came from Masjid near Railway and when they reached in Bazaar at about 08:00 PM. they saw accused persons namely (1) Ayaz @ Kabooral, (2) Arbab @ Baloo (armed with pistols), (3) Sarfaraz @ Safroo, (4) Waqar @ Waqoo, (5) Mustafa @ Mustoo (armed with iron roads) and two unknown persons having lathis in their hands used abusive language by saying they came for taking revenge from the complainant, thereafter

accused Mustafa @ Mustoo caused iron rod below to the brother of complainant Amanullah on nose on which he raised cries and fall down and accused Ayaz @ Kabooral fired upon his left leg with intention to commit his murder and accused Arbab @ Baloo fired upon his right leg, accused Mushtaq @ Mustoo against caused iron rod below to Amanullah (brother of complainant), accused Waqar @ Waqoo and Sarfaraz @ Safoo caused iron rod below to Irfan Ali (cousin of complainant), and so also other accused caused lathie below to him. Thereafter, all accused persons went away on their motorcycles. Moreover, the complainant thereafter brought the injured Amanullah at Hospital went to PS and lodged F.I.R.

3. Learned counsel for the applicants *inter alia* contends that the applicants are innocent and have falsely been implicated in this case as the complainant is a influential person and belongs to a political party; that the incident took place in middle of the town / city but no independent person came as witness; that there is delay of four days in lodging the F.I.R which was not plausibly explained by the complainant; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. He lastly prayed for confirmation of pre-arrest bail. Learned counsel has relied upon the case laws reported as 2012 YLR 2491, 2008 YLR 2717 and 2011 YLR 1987.

4. Conversely, learned counsel for the complainant opposed this bail application and contended that the name of applicants / accused are mentioned in the F.I.R with specific role of causing injury to the injured; that there is sufficient evidence available on record connecting the applicant with commission of offence, as such, they are not entitled for concession of bail. Learned counsel for the complainant has relied upon

the case laws reported as 2006 SCMR 933, 2016 MLD 1197 and 2018 P.Cr.L.J 487.

5. Learned Deputy Prosecutor General while adopting the arguments advanced by learned counsel for the complainant states that present applicants are the principal accused caused two firearm injuries to the injured Amanullah with intention to commit his murder, as such, they are also vigorously liable for commission of the alleged offence.

6. I have heard learned counsel for the parties and perused the material available on record. Perusal of the record reveals that applicants are nominated in the FIR with active participation in the alleged commission of offence. According to the F.I.R, accused Mushtaque @ Ghulam Mustafa caused iron rod below on nose, whereas accused Arbab @ Baloo fired from pistol to the injured Amanullah which hit him on his right leg beneath knee and such Medical Certificate dated 01.06.2018, issued by the Senior Medical Officer, Civil Hospital Dadu which was subsequently challenged by accused Arbab where-after a Medical Board was constituted consisting of six Medical Officers and on 01.08.2018 they found seven injured on the person of injured Amanullah and the remarks of the said Medical Officers are as under:-

“The examination of injured could not have been conducted because due to the plaster costing however, the video recording of injured done by MLO at the time of sustaining injuries were shown to the member of Special Medical Board which correlate with the injures”.

7. As far as the delay in lodging F.I.R is concerned, suffice to say that delay per se is not sufficient to extend the concession of bail, albeit such aspect can be considered coupled with other material collected by prosecution at relevant stage; PWs in their statements u/s 161 Cr.P.C. have supported the version of complainant, it appears that there is sufficient evidence connecting the applicants with commission of offence.

Moreover, it is well settled law that for grant of pre arrest bail, applicant has to show malafide intention and ulterior motives on the part of the complainant or police to cause unjustified harassment and arrest of accused tainted with malafide for the purpose of humiliation and malicious prosecution to him, no such assertion has been made. Further, the co-accused granted bail by the learned trial Court have assigned different roles to that of present applicants / accused, therefore, rule of consistency does not attracts in this case.

8. It also appears from the record that witnesses have implicated the applicants / accused specifically in commission of the alleged offence which allegation also finds support from other incriminating material available on the record therefore, while making tentatively assessment, *prima facie* appears reasonable grounds to believe that applicants / accused are connected with the offence with which they are charged, which does fall within prohibitory clause of Section 497(ii) Cr.PC, hence they are not entitled for concession of pre-arrest bail. I am fortified by the case reported as 2006 SCMR 933 (Supreme Court) which is an elaborate authority on the subject matter. In the said authority it was held that Medico-Legal report of the victim had, *prima-facie*, supported the accusation leveled against the accused in the F.I.R. I am also fortified by the case reported as 2016 MLD 1197, which is also an elaborate authority on the subject matter and in the said authority it was as under:-

“Accused was named in the F.I.R with specific role. Injuries attributed to accused, which were supported by Medico-Legal Certificate. Eye witnesses as well as injured witness stood by their statement under Section 161 Cr.P.C. Active participation of accused in the occurrence, *prima facie* was made out as *Itlaf-i-Salahiyyat-i-Udw* for which accused was charged was a heinous offence”.

9. In view of the above facts and circumstances, I am of the view that applicants have failed to make out their case for extra ordinary relief of pre-arrest bail, therefore, the interim pre-arrest bail granted to the

applicants / accused vide order dated 12.06.2018 is recalled and the instant bail application is dismissed. However, office is directed to send the copy of this Order to the trial Court for information who is directed to proceed with the matter in accordance with law.

10. Needles to mention here that observations made hereinabove are tentative in nature and thus will not prejudice the case of either party in trial.

JUDGE

Fahad Memon