

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

Cr. Bail Appln. No.S- 713 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing:	19.03.2019.
Date of order:	19.03.2019.

Mr. Bilawal Bajeer, Advocate for applicants alongwith applicants.
Mr. Poonjo Ruplani, Advocate for complainant alongwith complainant.
Miss Sana Memon, A.P.G for the State.

SHAMSUDDIN ABBASI, J:- Through instant bail application, applicants seek pre-arrest bail in Crime No.210/2018 registered at Police Station Badin for offences punishable under Section 324, 504, 34 PPC.

2. As per contents of FIR, both the parties have dispute over the landed property and on account of such dispute on the day of incident accused Abdul Ghaffar duly armed with iron rod came at the place of incident alongwith applicant Ghulam Nabi who was also armed with iron rod. It is specifically mentioned in the FIR that applicant Abdul Ghaffar had caused iron rod injury to the injured at his right leg. During investigation, the said injury was declared by Medical Officer u/s 337-F(vi) PPC and after usual investigation the case was challaned which is pending adjudication before the trial Court.

3. It is inter alia contended by learned counsel for the applicants that there is civil dispute between the parties; that complainant party has managed the false entries in the revenue record of the accused party and the accused party had filed Direct Complaint in the Court of Special Judge (Provincial) Hyderabad and the same was brought on

record; that the applicants are the witnesses in the said Direct Complaint; that applicants are innocent and they have falsely been implicated in this case due to malafide intentions and ulterior motives; that the applicability of Section 324 PPC is yet to be determined at trial and the injury sustained by injured is on non-vital part of the body and same has been declared u/s 337-F(vi) PPC which is punishable for 07 years; that the case has been challaned and they are regularly attending the trial Court.

4. On the other hand, learned counsel for the complainant submits that after usual investigation police submitted challan u/s 324 PPC which is punishable for 14 years and the case falls within the prohibitory clause of Section 497 Cr.P.C; that the accused Ghulam Nabi has shared the common intention and came at the place of incident and he facilitated the principal accused who caused fatal injury to the injured; that no malafide has been shown by the applicants.

5. Learned A.P.G. raised objection to the grant of bail to accused Abdul Ghaffar on the ground that specific role of causing injury has been attributed to applicant Abdul Ghaffar which was declared by the Medical Officer u/s 337-F(vi) PPC which is punishable for 07 years however, she made no objection for grant of bail to co-accused Ghulam Nabi.

6. Heard learned counsel for the applicant, learned D.P.G and perused the material available on record.

7. It appears that there is civil as well as criminal litigation in between the parties wherein it has been alleged by the applicants party that complainant party of this case have managed false entries in the revenue record of the applicants party and the applicant party has filed Direct Complaint against complainant party in the Court of Special Judge Anti-Corruption, Hyderabad which is pending adjudication.

There is delay of one day in lodging the FIR which has not been properly explained by the complainant and in background of delay in lodging of the FIR, it cannot be ruled out that the FIR has been lodged after due deliberation and consultation. As per the case of applicant Ghulam Nabi is concerned, mere his presence has been shown at the place of offence and as per role of applicant Abdul Ghaffar is concerned, he caused iron rod injury on the right leg of injured and said injury has been declared by the Medical Officer u/s 337-F(vi) PPC which is punishable for 07 years. At this stage, I am fortified with the case of Khalil Ahmed Soomro and others v. The State (PLD 2017 Supreme Court 730), wherein the Honourable Apex Court has granted bail to the accused to whom the allegation was of causing injury to the injured and the same injury was declared by the Medical Officer u/s 337-F(vi) PPC and it was observed as under:-

“4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497, Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police.

5. Although for grant of pre-arrest bail one of the pre conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years' imprisonment. All those aspects if are combindly taken, may constitute element of mala fide.”

In the view laid down by the Hon'ble Apex Court in the case of Khalid Ahmed Soomro Supra, I am of the considered view that the injury sustained by the injured at the hands of present applicant was declared under Section 337-F(vi) PPC, which is on non-vital part of the body and so far the question of applicability of Section 324 PPC is concerned which yet to be determined after recording evidence, therefore, I am extending benefit by observing that the case of applicants requires further enquiry in terms of Section 497 (2) Cr.P.C. Accordingly, I allow this bail application and confirm the bail of the applicants on same terms and conditions. The trial Court is directed to conclude the trial within a period of three months. However, the observation made herein above is on tentative assessment and trial Court may not be influenced.

JUDGE

Tufail/PA