

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

Criminal Bail Application No.S-22 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection
For hearing of main case.

22.02.2021

Mir Sajad Ali Talpur, advocate along with applicant.
Ms. Sobia Bhatti, A.P.G for the State.

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Irshad Ali Shah, J:- It is alleged that the applicant with rest of the culprit after having formed an unlawful assembly and in prosecution of their common object has caused hatchets blows to PW Mustafa and then went away by issuing threats of murder to complainant Abdul Ghani, for that the present case was registered against them.

2. The applicant on having been refused pre arrest bail by learned Additional Sessions Judge, Khipro has sought for the same from this Court by way of instant application u/s 498 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party in order to satisfy its dispute over plot; the FIR has been lodged with delay of about one day and co-accused Khamiso and two others have already been admitted to bail by learned trial Court. By contending so, he sought for pre-arrest bail for the applicants on point of further enquiry and malafide.

4. Learned A.P.G. for the State has opposed to grant of pre arrest bail to the applicant by contending that he has actively participated in commission of incident by causing hatchet blow to Pw Mustafa.

5. I have considered the above arguments and perused the record.

6. The FIR of the incident has been lodged with delay of about one day; such delay could not be overlooked. The injury sustained by injured PW Mustafa, which is attributed to applicant is not falling within prohibitory clause of section 497(2) Cr.P.C. The case has finally been challaned. Parties are already disputed over plot. There is counter version of the incident. Which party is aggressor and which party is aggressed upon? It requires determination at trial. The applicant has joined the trial. Co-accused Khamiso and two others have already been admitted to bail by learned trial Court. In these circumstances, it is rightly being contended by learned counsel for the applicant that the applicant is entitled to grant of pre-arrest bail on point of malafide.

7. In case reported as *“Khalil Ahmed Soomro and others Vs. The State”* (PLD 2017 SC-730) Hon’ble apex Court has admitted the accused to bail by making following observation;

“----Ss. 498 & 497---Constitution of Pakistan, Art. 185(3)--- Penal Code (XLV of 1860), Ss. 337-A(i), 337-F(i), 337-F(vi), 337-L(2) & 504---Shajjah-i-khafifah, ghayr-jaifah damiyah, ghayr-jaifah munaqqillah, other hurt, intentional insult with intent to provoke breach of peace---Pre-arrest bail, grant of---Mala fide of complainant---Offences with which accused persons were charged were punishable by way of imprisonment which

did not fall within the prohibitory part of S. 497, Cr.P.C.--- When the accused persons were entitled to post arrest bail, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone---Accused persons were likely to be humiliated and disgraced due to their arrest at the hands of the local police---In the present case, it appeared that net had been thrown wider and the injuries sustained by the victims except one or two, had been exaggerated---Seemingly efforts had been made to show that the offences fell within such provisions of law, which were punishable with five years' or seven years' imprisonment---All said aspects, when considered combindly, constituted mala fides on part of complainant party ---Accused persons were granted pre-arrest bail accordingly”.

8. In view of above, the interim pre-arrest bail already granted to the applicant is confirmed on same terms and conditions.

9. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa.