

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-805 of 2020

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

26.02.2021

Mr. Mazhar Ali Laghari, advocate along with applicants.
Mr. Shahid Ahmed Shaikh, D.P.G for the State.
Mian Taj Muhammad Keerio, advocate for complainant.

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Irshad Ali Shah, J:- It is alleged that the applicants with rest of the culprit in prosecution of their common intention caused hatchets blows to PW Abdul Jabbar thereby he sustained fracture of three fingers of right hand and then all the accused went away by insulting complainant Allah Bux, for that the present case was registered against them.

2. The applicants on having been refused pre arrest bail by learned Additional Sessions Judge, Shahdadpur have 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 applicants that the applicants being innocent have been involved in this case falsely by the complainant party in order to satisfy its grudge over freewill marriage of Mst. Momal; the FIR has been lodged with delay of about one day and co-accused Akber has 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. In support of his contention he has relied upon cases of *Gohar alias Ali Gohar and*

another vs The State (2012 YLR 1010) and Sultan and 6 others vs The State (2018 YLR 204).

4. Learned D.P.G. for the State and learned counsel for the complainant have opposed to grant of pre arrest bail to the applicants by contending that they have actively participated in commission of incident by causing fracture of three fingers of the injured.

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. It is not specified specifically which of the accused actually caused fracture of the fingers of the injured. Indeed there is general allegation. Co-accused Akbar has already been admitted to bail by learned trial Court. Parties are already disputed on account of freewill marriage of Mst. Momal. The case has been challaned. The applicants have joined the trial. In these circumstances, it is rightly being contended by learned counsel for the applicants that the applicants are entitled to grant of pre-arrest bail on point of malafide.

7. In case of *"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 applicants is confirmed on same terms and conditions.

9. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa.