

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Criminal Bail Application No.S-136 of 2021

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For hearing of main case.

**02.03.2021**

Mr. Nabi Bux Narejo, advocate along with applicant.

Ms. Sobia Bhatti, A.P.G for the State.

Mr. Abdul Aziz Memon, advocate for complainant.

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**Irshad Ali Shah, J:-** It is alleged that the applicant with rest of the culprits in furtherance of their common intention caused hatchet blow to complainant Ghulam Qadir on his head with intention to commit his murder and then went away by insulting the complainant party, for that the present case was registered.

2. The applicant on having been refused pre arrest bail by learned I/C Sessions Judge, Umerkot 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 grudge with him over landed property; the FIR has been lodged with delay of about one day; as per medical opinion no hatchet injury is sustained by the complainant and offence alleged against the applicant is not falling within prohibitory clause of section 497(2) Cr.P.C. By contending so, he sought for pre-arrest bail for the applicant on point of further enquiry and malafide.

4. Learned A.P.G. for the State and learned counsel for the complainant have 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 the complainant on his head. In support of their contentions they relied upon case of *Sheqab Muhammad vs The State and others (2020 SCMR 1486)* and *Ghani Khan vs The State and another (2020 SCMR 594)*.

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. No injury with a sharp cutting weapon was found to have been sustained by the complainant on medical examination. The injuries sustained by the complainant are not falling within prohibitory clause of section 497(2) Cr.P.C. Whether such injuries were caused to the complainant with intention to commit his murder? It requires determination at trial. Parties are already disputed over landed property. The case has finally been challaned. The applicant has joined the trial. 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. The case law relied upon by learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In those cases fire arm was used. In the instant case,

no fire arm is used and medical evidence is in conflict with the ocular evidence.

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.