

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.610 of 2021

<i>Date</i>	<i>Order with signature of Judge</i>
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1. For orders on office objection.
2. For hearing of Bail Application.

21.09.2021

Mr. Muhammad Islam Leghari, Advocate a/w Applicant (on bail).
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Irshad Ali Tetri alias Arshad Ali seeks his admission on pre-arrest bail in Crime No.91/2020 of Police Station Darro, District Sujawal, under Section 365/5011/337-F(iv)/337-F(i)/504/34 PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 09.03.2021, hence this bail application.

Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that the incident, as reported, is said to have taken place on 05.07.2020 whereas report thereof was lodged on 22.11.2020 i.e. with delay of about five months and no plausible explanation was furnished by the prosecution for such an inordinate delay. Next submits that the allegation against applicant is that he allegedly caused wrong side hatchet blow to sister of the complainant; besides, he along with co-accused Sikandar had attempted to kidnap her, to which his sister resisted and cried for rescue. Meanwhile, co-accused Sikandar caused iron rod blow which landed on her right leg, therefore, she fell down and the applicant/accused Irshad Ali Tetri @ Arshad Ali caused wrong side hatchet blow to her which landed on her right ankle and then all the accused by issuing threats, decamped from the scene by boarding in a Suzuki parked outside the house. He further submits that injury allegedly attributed to the applicant was challenged by him before Special Medical Board where after examination of the injured, Members of Special Medical Board have

unanimously opined that medico legal certificate issued by Dr. Saba Fatima Soomro, WMO RHC Daro District Sujawal is “**Possibility of accidental injury cannot be ruled out**”. In support of his contention, learned counsel places on record copy of opinion of Special Medical Board bearing No.CS/HYD/(Injured-3215)/14421/25 Hyderabad, dated 1.06.2021, which is hereby taken on record. Copy whereof, has been provided to learned Addl. P.G, Sindh. Learned counsel further submits that injury allegedly sustained by the injured Mst. Naheedan was declared by WMLO to be punishable under Section 337-F(iv) PPC which carries maximum punishment up to five years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C. Learned counsel further adds that case has been challend by the police which is now pending for preliminary proceedings before the Court of Judicial Magistrate, Mirpur Bathoro and the applicant, after furnishing surety before this Court, has also surrendered/joined trial proceedings. He, therefore, submits that by granting application, interim bail granted to the applicant, may be confirmed.

On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that specific role of causing injury to a lady is assigned to applicant; besides, he and co-accused have attempted to kidnap the injured, who was saved and rescued; hence, he is not entitled for bail. She; however, could not controvert the fact that co-accused Sikandar against whom allegation of causing iron rod blow to same injured on non-vital part of the body of injured, has been extended grace of pre-arrest bail by the trial Court.

Complainant Abdul Salam was present before the Court on the last date of hearing and sought time to bring his counsel; however, today neither the complainant nor his counsel are in attendance without intimation and they have chosen to remain absent instead to pursue instant bail application vigilantly.

Heard arguments and perused record. Admittedly, the FIR is delayed for about five months for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay, occasioned, reveals that FIR was lodged after deliberation and consultation and as per settled law as defined by the superior Courts that delay in lodgment of criminal cases always presumed to be fatal for the prosecution. Co-accused

Sikandar has also been assigned role of causing iron rod blow to injured on her non-vital part of the body, same is the allegation against present applicant; however, bail of co-accused was confirmed by the Court of Sessions and the request made by present applicant was declined though the role against both of accused is same and he should also have been treated at par. Hence, propriety of law demands that constant treatment should be extended in favour of the accused/accused. Moreover, the injury allegedly sustained by the injured has been declared by WMLO to be punishable under section 337-F(iv) PPC which carries maximum punishment up to five years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C. As far as, allegation of attempt with regard to the abduction of injured is concerned, it is yet to be determined by the trial Court after recording evidence of the parties. At this juncture, I am of the view that applicant has made out a good prima facie case for his admission on bail, therefore, bail application in hand, is hereby allowed; interim bail granted earlier to applicant **Irshad Ali Tetri alias Arshad Ali son of Allah Dino Tetri** on 13.04.2021 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE