

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1992 of 2020**

*Date*

*Order with signature of Judge*

Umar Shah & others Vs. The State

Haji Abdul Rehman, Advocate for the Applicants

Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh

Mr. Usman Farooq, Advocate for the Complainant.

Date of hearing : 12<sup>th</sup> October, 2021

Date of Order : 12<sup>th</sup> October, 2021

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicants Umer Shah, Mir Akbar Shah, Zar Bakht Shah, Syed Waqar Shah and Syed Riaz Muhammad Shah seek their admission on pre-arrest bail in Crime No.665/2020 of Police Station Jamshed Quarters, Karachi, under Section 337-A(i)/337-F(i)/337-F(ii)/337-D/147/148/149 PPC. The case has been challaned which is now pending for trial before the Court of 24<sup>th</sup> Judicial Magistrate, Karachi (East) (re-the State Versus Umar Shah and others). Accused preferred Bail Application No.4491/2020 before the Court of Sessions, which subsequently was assigned to 4<sup>th</sup> Additional Sessions Judge, Karachi (East), where after hearing parties, their request was turned down by means of order dated 17.12.2020; hence, they have maintained instant bail application.

2. 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.

3. Learned counsel for the applicants submitted that case against applicants is false and fabricated; besides, they have not been assigned any specific role which may determine that who caused fatal blow to the injured. He further submitted that applicants, after furnishing surety before this Court, have been appearing before the trial Court, therefore, they are entitled for grant of bail. He; however, was not in position to pinpoint any malafide on the part of injured or complainant for their false implication.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State vehemently opposed the bail application on the ground that all the accused had jointly caused multiple injuries to the injured Bakhat Ali Shah thereby injuries No.1 & 4 sustained by the injured were declared by the medico legal officer as Jurh-e-Ghayr-Jaifah-Badiah, while injuries No.2 & 3 were declared as Jurah Ghair Jaifa Damiyah, injury No.5 was declared as Jurh Jaifah and injury No.6 was declared as Shajjah-e-Khafifah.

5. Learned counsel for the complainant while adopting arguments advanced by learned Addl. P.G, Sindh, also opposed the bail application on the ground that looking to the severe and grievous injury(ies) sustained by the injured and in view of final medico legal certificate issued by MLO as well as by special medical board, injury No.5 has been declared as Jurh Jaifah which is punishable under Section 337-D PPC, therefore, accused shall be liable to Arsh which shall be one third of the Diyat and may also be punished with imprisonment of either description for the term which may extend to ten years as Ta'zir, thus falls under the prohibition contained under Section 497 Cr.P.C; hence, they are not entitled for the extraordinary relief in shape of pre-arrest bail.

6. **Heard arguments and record perused.**

7. It is admitted position of record, accused, who all were having iron bars, wooden sticks etc. had caused multiple injuries to the injured and some of them have been proved grievous in nature. The injury sustained by injured on his abdomen has been stitched with number of stitches and abdomen is vital part of the body where entire mechanism of human body is being run naturally. Per final medico legal certificate as well as opinion of the special board, injured sustained following six injures;

- i. Incised wound 2cm w0.5cm x muscle deep on upper chest.
- ii. Incised wound 1cm x 2xm x skin deep right chest.
- iii. Two incised wounds kin deep mid left chest.
- iv. Incised wound 2cm x 5cm x muscle deep on left upper arm, lateral aspect.
- v. Incised wound 2 x 5cm x muscle deep let mid axillary line.
- vi. Lacerated wound 3cm x 1cm on perieto- occipital.

8. And out of them, injury No.5 has been declared as Jurh Jaifah punishable under Section 337-D PPC which carries punishment of 10 years;

hence, exceeds limits of prohibitory clause of section 497(i) Cr.PC. Since the injured sustained Jurh Jaifah injury, therefore, accused shall be liable to Arsh, which shall be one third of the Diyat and may also be punished with imprisonment of either description for the term which may extend to 10 years as Tazir; hence, argument advanced by learned counsel for the complainant as well as learned Addl. P.G, Sindh to the effect that offence is heinous one, carries much weight.

9. The contention raised by learned counsel for the applicants that injuries allegedly declared by medico legal officer carries punishment which does not exceed limits of prohibitory clause of section 497 Cr.P.C has no force as section 337-D PPC is punishable with ten years punishment and thus falls under prohibitory clause of section 497 Cr.P.C. All the PWs have specifically implicated and supported the case of prosecution. As far as instant bail application is concerned, in order to get pre-arrest bail one has to establish malafide on the part of prosecution and it being extraordinary relief cannot be granted easily to everyone particularly when there is no malafide on the part of prosecution. Reliance can be placed upon case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)* and *RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129)*. Further, the injured was also referred to Special Medico Legal Board where the injuries allegedly sustained by the injured as well as declared by MLO were found correct; besides, he (the injured) is still under treatment.

10. In the circumstances and in view of above factual position, I was of the opinion that no case for interference was made out. Consequently, bail application in hand was dismissed except bail application of applicant/accused Mir Akbar Shah son of Imdad Shah, who being aged of about 75 years, his case was covered by subsection 2 to section 497 Cr.P.C; consequently, interim bail granted earlier to him (Mir Akbar Shah) on 21.12.2020 was confirmed on same terms and conditions. However, rest of the applicants present before the Court were taken into custody and remanded to jail with directions to jail authorities to produce them before the trial Court as and when they may be summoned. Above are the reasons for the short order dated 12.10.2021.

**JUDGE**