

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

Cr. B. A. No. S- 801 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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22.10.2021

For orders on office objections  
For hearing of main case

Mr. Muneer Hussain Turk, Advocate along with applicants  
Ms. Sana Memon, A.P.G. along with Mr. Anwar Hussain  
Advocate for complainant.

**ADNAN-UL-KARIM MEMON, J.-** Through instant Cr. Bail Application, applicants Fayaz Hussain, Farooque Hussain, and Ali Hyder @ Aziz seek pre-arrest bail in Crime No. 26 of 2021 registered at police station Chalgari under Section 337-A (i), F (i), 147, 148, 149 & 109 PPC. Subsequently, in challan offenses under section 337-L(2), 337-A(iv) 337-A(i), and F-(i) PPC were added.

2. The accusation against the applicants is that on 28.8.2021 they in connivance with co-accused attacked the Complainant party with hatchets and sticks / lathies and caused injuries to complainant and his witnesses, such report of the incident was lodged with Police Station Chalgari, initially under Section 337-A (i), F(i), 147, 148, 149 & 109 PPC; and, succeeded in obtaining letter for medical treatment; Subsequently offenses under section 337-L(2), 337-A(iv) 337-A(i) and F-(i) and F(iv) PPC were added in the crime report. Co-accused succeeded in obtaining pre-arrest bail from the learned trial court however on the same set of evidence the present applicants were refused the concession of anticipatory bail vide order dated 9.9.2021. They being aggrieved by and dissatisfied with the impugned order to their extent have approached this Court. The interim bail was granted to the applicants vide order dated 13.9.2021 and today the matter is fixed for confirmation or otherwise.

3. At the very outset, learned counsel for the applicants reiterated the grounds taken by the applicants vide order dated 13.9.2021, however he further argued that the injuries ascribed to the applicants almost are on the non-vital parts of the bodies of injured vide un-dated Mashirnama of injuries; and even are exaggerated by the prosecution on the premise that no specific

role has been assigned to the applicants in the commission of alleged crime. He further submitted that in actual the instant FIR has been registered due to acrimony over matrimonial dispute between the parties, thus false implication of the applicants could not be ruled out. It has further been argued that declaration of purported injuries was made at belated stage with delay of 10 days which speaks volumes qua its authenticity; that even if it is assumed that the injuries have been caused by the applicants, still it does not fall within the prohibitory clause of Section 497(1) Cr.P.C. entitling the applicants for extra-ordinary relief sought for. Learned counsel lastly argued that the sections applied in the FIR and Challan are not attracted as per Medical certificates issued by Medico-Legal Officer (MLO) on 8.9.2021; and the police malafidely at the instance of Complainant party is trying to arrest and humiliate the accused just to compel them to bow before the complainant party; that there is delay of one day in lodging FIR for which no cogent and plausible explanation has been furnished by the complainant; that the place of incident is an open place but no independent person has been cited as witness; that ocular account stands contradicted by medical evidence and in absence of an independent witness, applicants general participation, resulting into an injury on non-vital part of the body of injured, particularly in absence of repeated lathi blows, squarely brings their case within the ambit of further inquiry. He prayed that interim pre-arrest bail already granted to the applicants may be confirmed on the same terms and conditions.

4. Learned A.P.G. assisted by learned counsel for Complainant opposed the Bail to the applicants with vehemence and has argued that the grounds taken by the applicants are not only beside the mark but also cannot be attended without undertaking an in-depth analysis of the prosecution case, an exercise forbidden by law at bail stage. In a daylight affair, several people sustained lathi injuries besides having endured violence through blunt means and as such requires no public support to drive home the charge; their statements supported by medical evidence of even date, cumulatively bring applicants case prima facie within the mischief of sections 337L (2), 337-A (iv) 337-A (i) and F-(i) and F (iv) of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view whereof, they cannot be released on pre-arrest bail in absence of any consideration within the purview of subsection (2) of Section 497 of the Code *ibid*. Similarly, murderous assault as defined in section *ibid* draws no anatomical distinction between vital or non-vital parts of human body. Once the blow is inflicted and the victim is effectively

targeted intention or knowledge; as contemplated by section ibid is manifested; the course of a Such blow is not controlled or steered by the assailant's choice nor can he claim any premium for poor marksmanship. She also emphasized that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially includes an arrest to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offense through the collection of information/evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary be all mean, which is not the case in hand. She prayed for dismissal of instant bail application.

5. I have heard learned counsel for the parties and gone through the record.

6. Primarily, there is a prime distinction between pre-arrest and post-arrest bail. Pre-arrest is an extra-ordinary remedy while post-arrest is an ordinary remedy. Allegation of involvement of the accused should be mere an allegation tainted with malice from either side. The facts and circumstances of the present case, prima-facie create doubt regarding the prosecution version to the extent of sustaining injuries by the injured; and, on the other hand, opined by the Doctor. Even the Mashirnama of injuries, allegedly prepared by the police is un-dated which creates doubt, in the version of the complainant whether he is telling the true story or otherwise; however, no reason has been assigned to that effect. There is no denial to this fact that the declaration of injuries on the part of injured was made after lapse of 10 days by the MLO, no such delay has been brought on record to tentatively opine as to who caused which injury with what weapon. It is an established principle of law that benefit of doubt can even be extended at bail stage. Besides the injuries ascribed to the applicants have been declared falling under 337-L(2), 337-A (iv) 337-A(i) and F(i) and F(iv) of the Pakistan Penal Code which entails as per statute maximum punishment of seven years. Primarily the grant of bail in cases covered under section 497(2) Cr.P.C is a rule and refusal is an exception. Reliance is placed on the cases of *Tariq Bashir v. The State (PLD 1995 SC 34)* and *Muhammad Tanveer V. The State and another (PLD 2017 SC 733)*.

7. As far as the question of applicability of the aforesaid sections of PPC is concerned, undeniably, most of the injuries are on non-vital part against a

motive which is feeble, hence, I am constrained to give any finding lest it may prejudice the case of either party, however, it would be resolved by the learned trial court after recording evidence during the proceeding before it.

8. Keeping in view all the facts and circumstances and while seeking guidance from the judgment of Honorable Supreme Court in the case of *Muhammad Umar vs. the State and another* (**PLD 2004 Supreme Court 477**), I am of the tentative view that the case of applicants is of "further inquiry" falling within the ambit of section 497(2) Cr.P.C. Otherwise, the liberty of a person is a precious right that has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973.

9. As a consequence of the facts and circumstances surfaced on the record, I am persuaded to allow the instant bail application; the applicants are already on interim bail vide order dated 13.9.2021, and the same is confirmed on the same terms and conditions.

10. Before parting with this order, it has been made clear that the observations made hereinabove are tentative and it shall have no bearing during proceedings before the trial court

JUDGE