

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD

Cr. Bail Application No.S-860 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants: Through Mr. Ghulam Hussain Palari advocate

Complainant: Through Mr. Muzamil Bughio advocate

The State: Ms. Sana Memon, Assistant P.G Sindh

Date of hearing: 25.10.2021

Date of decision: 25.10.2021

**O R D E R**

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**ADNAN-UL-KARIM MEMON, J** :- The Applicants through the captioned bail application has called in question the rejection of their Anticipatory Bail Application by the learned 1<sup>st</sup> Additional Sessions Judge /MCTC Badin vide order dated 24.9.2021.

2. The accusation against the applicants in the crime report is that on 18.6.2021 at 11.30 am, they all in connivance with each other attacked upon Pervaiz Ali and Mushik Ali and inflicted serious injuries on their head and other parts of their bodies, such report of the incident was lodged with Police Station Matli District Badin on the second day under Section 324, 506/2, 337-A (i), 337-F (ii), 3374-H (ii), 504 & 35 PPC. They being aggrieved by the inclusion of their names in the aforesaid crime, approached the learned trial court, whereby their pre-arrest bail was rejected on the premise that specific role was assigned to the applicants of causing injuries to Pervaiz and Mushik Ali; and, they had criminal past. Finding no way, the applicants approached this court for such relief and succeeded in getting interim order in their favor on 30.9.2021.

3. Learned counsel for the applicants mainly argued that the applicants are innocent and have falsely been implicated in this case. The whole prosecution story is false and concocted; that complainant lodged FIR after a delay of two months and 13 days; that there is civil litigation pending between the parties before learned Senior Civil

Judge Matli; that all P.Ws are interested being relatives. Learned counsel further argued that the injuries ascribed to the applicants almost are on non-vital parts of the bodies of purported injured; 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 a civil dispute between the parties as discussed supra, thus false implication of the applicants could not be ruled out. It has been further argued that declaration of purported injuries was made at belated stage 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 are not attracted as per Medical certificate issued by the Medico-Legal Officer (MLO); and the police malafidely at the instance of Complainant party is trying to arrest and humiliate the applicants just to compel them to bow before the complainant party; 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 the absence of an independent witness from the public, applicants general participation, resulting into an injury on non-vital part of the body of injured, particularly in the absence of repeated lathi blows/hard and blunt substance, 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 plea of applicants with vehemence and has argued that earlier pre-arrest bail of the applicants was turned down by learned 1<sup>st</sup> Additional Sessions Judge /MCTC Badin vide order dated 24.9.2021; that they were required to surrender before the law, however, they failed to do so; that extraordinary concession is not available to the applicants which is meant to save innocent and not the people like applicants and that Medico-legal Report (MLR) supports the version of the complainant/injured witnesses, therefore, the applicants are not entitled to the concession of pre-arrest bail;

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 the bail stage. It is urged by them that the applicants have criminal history, thus no indulgence of this court is required under such circumstances.

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

6. The Honorable Supreme Court in the recent judgment in pre-arrest bail matters has held that judicial protection is based on equity and cannot be extended in every run-of-the-mill criminal case founded upon incriminatory evidence, warranting custody for investigative purposes. Primarily, the remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of Honorable Supreme Court rendered in the case of Gulshan Ali Solanqi and others v. The State through P.G. Sindh (2020 SCMR 249)

7. Tentative assessment of record shows that in a daylight affair, two young men sustained lathi/hard and blunt substance injuries on their bodies; record further divulges that the injured were examined on the same day, while MLR confirms that the injuries have been inflicted with sharp & blunt weapon which resulted into bone expose. The applicants are specifically nominated for the role of causing sharp and blunt weapon injuries on the person of injured Pervaiz and Mushak Ali. MLR corroborates the version of complainant with further corroboration qua kind of weapons; their statements bring applicants' case prima facie within the provision of Sections 324, 506/2, 337-A (i), 337-F (ii), 3374-H (ii), 504 & 35 of the Pakistan Penal Code, 1860, hit by statutory prohibition contained in section 497(I) Cr.P.C, because of which, they cannot be released on pre-arrest bail. The crime weapons through which severe injuries were caused are yet to be recovered for which their arrest as per peculiar circumstances is necessary. In such circumstances, they are required to surrender before the concerned police forthwith.

8. The Honorable Supreme Court in its various pronouncements has held that murderous assault as defined in section 324 PPC draws

no anatomical distinction between vital or non-vital parts of the human body; that once an assault is made and the victim is effectively targeted intention or knowledge; as contemplated by the section 324 PPC is manifested; the course of such assault is not controlled or steered by the assailant's choice nor can he claim any premium for poor assault. Prima-facie, the applicants 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.

9. 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 malafide from either side.

10. The facts and circumstances of the present case, prima-facie show that the prosecution version to the extent of sustaining injuries by the injured is still intact; and, on the other hand, opined by the Medico-Legal Officer. Even the Mashirnama of injuries supports the prosecution version. Besides the injuries ascribed to the applicants have been declared falling under 337-A (i), 337-F (ii), 3374-H (ii) of the Pakistan Penal Code which entails as per statute maximum punishment of ten years.

11. Keeping in view all the facts and circumstances and while seeking guidance from the judgment of Honorable Supreme Court in the cases of Chaudhry Shujat Hussain v. The State (1995 SCMR 1249), Muhammad Umar vs. the State and another (PLD 2004 Supreme Court 477), Alam Zeb and another v. State and others (PLD 2014 S.C. 760) and Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), I am of the tentative view that the case of applicants does not fall within the ambit of "further inquiry" falling within the ambit of section 497(2) Cr. P.C, rather there are reasonable grounds for believing that the applicants have participated in commission of alleged offenses.

12. As a consequence of the facts and circumstances surfaced on the record, I am not persuaded to grant extraordinary relief to the applicants under Section 498 Cr.P.C. The Criminal Bail Application No. S- 860 of 2021 arising out of Crime No.140/2021 of P.S Matli, registered for offenses u/s 324, 506/2, 337-A(i), 337-F(ii), 3374-H(ii), 504 & 35 PPC is hereby dismissed. Consequently, interim pre-arrest bail already granted to the applicants, vide order dated 30.09.2021, is hereby recalled.

JUDGE

Sajjad Ali Jessar