

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD

Cr. Bail Application No. S- 682 & 729 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants:	Muhammad Naqash, Zulfiqar Ali, Khalique Zaman, Muhammad Asghar, Gulzar Hussain, Muhammad Asad, Shamsheer Ali, Sheeraz Ali, Parvez Ahmed alias Muhammad Sidique, Muhammad Younis, Muhammad Ishaque and Muhammad Idrees in Cr. B.A. No. S- 682 of 2021 through Mr. Muhammad Ishaque Khoso, Advocate
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AND

Muhammad Umar in Cr. B.A. No. S- 729 of 2021  
through Mr. Muhammad Iqbal Kasar, Advocate

Ms. Safa Hisbani, Assistant P.G Sindh

Date of hearing & decision: 08.11.2021

**O R D E R**

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**ADNAN-UL-KARIM MEMON, J:-** The Applicants in Cr. B.A. No. S- 682 of 2021 have 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 20.08.2021, while applicant Muhammad Umer in Cr. B.A. No. S- 729 of 2021 seeks post-arrest bail in Crime No. 108 of 2021 registered at police station Tando Ghulam Ali under Section 324, 147, 148, 149, 298-A, 153, 337-F(i) & 337-A(i) PPC.

2. Brief facts of the case are that complainant Khalid Hussain lodged FIR at above police Station on 10.8.2021 at 1300 hours stating therein that he is doing business of Beverages near Press Club, Majlis Chowk Tando Ghulam Ali; and, he belongs to Shia sect; that he installed 5/6 panaflex in front of his shop of Panjtan Pak. On 10.8.2021, he along with Nawaish Ali Khokhar, Muhammad Hanif alias Papoo Qambrani and Inayat Ali Khaskheli were present at his shop. Suni Rabta Council Rally arrived in three coasters at 1200

hours. Accused persons alighted in front of his shop and started using filthy language against Imams and repeated the words, Shia Kafar, Shia Kafar. The Rally led by Muhammad Naqash Mavia s/o Saeed Ahmed, Zulfiqar Ali son of Meer Muhammad Dars, Khaliq-uz-Zaman son of Abdul Hameed Arain, Asghar son of Baloch Khan Pathan, Gulzar Hussain Jiskani, and Muhammad Asad Arain. Accused persons were having lathis, Iron rods, and hatchets. About 100 other persons were with them. They started removing said panaflex and the complainant side restrained them. Thereupon accused Muhammad Younis Leghari, gave blunt side hatchet blow to complainant on his head with intent to kill, accused Muhammad Naqash Mavia gave Iron rod blow to the complainant at the right ear. Accused Zulfiqar Ali Dars gave lathi blow to the complainant at the right ear. Accused Zulfiqar Ali Dars gave a lathi blow to the complainant at left Arm and shoulder; accused Gulzar Jiskani gave lathi blow to complainant below-left eye. The other accused person also gave kicks and fist blows to him. The friends of the complainant tried to rescue them however; the accused persons issued threats of dire consequences and left the place of incident with shouting Shia kafir, Shia kafir. Complainant obtained letter for medical treatment from Police Station and after visiting, hospital lodged the FIR.

3. Mr. Muhammad Ishaque Khoso, learned counsel for applicants in Cr. B.A. No. S- 682 of 2021 has argued that the applicants are innocent and have falsely been implicated by the Complainant party for ulterior motives; that no incident has ever taken place as alleged by the Complainant but the Complainant party who are inimical towards Sunni sect has thrown wide net to implicate several persons of the Sunni sect by name with parentage which creates serious doubt on the version of Complainant; that the FIR does not show any derogatory remarks against Panjtan Pak and on the contrary it is a story which is cooked by the complainant; the injuries alleged by the complainant are self suffered. Learned counsel lastly contended that if bail is not confirmed to the accused persons of Cr. B.A. No. S- 682 of 2021 and if the bail is not granted to the applicant Muhammad Umar in Cr. B.A. No. S- 729 of 2021 they will be arrested in a false case and they being respectable persons their reputation will be seriously prejudiced.

4. Mr. Muhammad Iqbal Kasar learned counsel for the applicant in Cr. B.A. No. S- 729 of 2021 has argued that section 298-A, P.P.C. isailable; that there is no independent direct evidence in the case; that investigation in the case is complete and the applicant is no more required for further investigation. He prayed for grant of post-arrest bail to the applicant.

5. Learned A.P.G. opposed the bail plea of applicants with vehemence and has argued that the names of applicants / accused are mentioned in the FIR and they have committed heinous offense, hence they are not entitled to bail.

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

7. The accusation against the applicants is that they dismantled the Alam-Pak and repeated the words, which show sectarian hatred. Prima-facie, the said action on the part of the applicant if committed is a crime against society; and an act of causing disturbance in Moharram-ul-Haram. It is also alleged that the applicants in furtherance of their common intention caused injuries to the complainant and his witnesses and issued threats of dire consequences, to that extent, specific allegations of causing several injuries to the complainant are available against accused Muhammad Naqash, Zulfiqar Ali, Gulzar Hussain, and Muhammad Younis. Prima-facie medical report of the injured dated 12.8.2021 supports the prosecution case, coupled with the statement of witnesses. Mashirnama of injuries and recovery of such incriminating items explicitly show the happening of the alleged offenses. Primarily the offense under section 298-A, P.P.C. punishes people for using derogatory language against the wives or other family of Prophet Muhammad (PBUH), the four righteously-guided caliphs, or the other companions of the prophet (PBUH). The penalties can be as high as a three-year prison sentence and a fine.

8. The learned trial court while rejecting their request for pre-arrest bail observed as under:-

“I fail to find any malafide intention of the prosecution, which is sine-qua-non for grant of bail in bail before arrest application. In such circumstances, no case of confirmation of pre-arrest bail is made out, so interim pre-arrest bail plea of the accused persons Muhammad Naqash Maavia s/o

Muhammad Saeed, Zulfiqar Ali son of Mir Muhammad Dars, Khalique Zaman son of Abdul Hameed Arain, Muhammad Asghar son of Baloch Khan Pathan, Gulzar Hussain son of Rohel Jiskani, Muhammad Asad son of Muhammad Hanif Arain, Shamsheer Ali son of Sawan Solangi, Sheeraz Ali son of Mehboob Ali Solangi, Parvaiz Ahmed alias Muhammad Siddique s/o Noor Ahmed Arain, Muhammad Younis son of Haji Khan Muhammad Leghari, Muhammad Ishaque son of Muhammad Khan Leghari and Muhammad Idrees son of Yousuf Leghari is meritless and the prayer of bail is declined.”

9. The remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. The Hon’ble Supreme Court in the case of “Gulshan Ali Solangi and others v. The State through P.G. Sindh” (2020 SCMR 249) has graciously held as under:-

“grant of pre-arrest bail is a remedy routed into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honor. It cannot be granted in every run of the mill criminal case, particularly to the accused confronted prima facie charges structured upon material/ evidence, warranting custody, that too, on the basis of positions/pleas verification whereof, is consequent upon recording of evidence.”

10. For the purpose, a record has been examined which shows that role assigned to applicants is of causing iron-rod injuries on the head of the complainant. The record further divulges that the injured was examined, while MLR confirms that the injuries have been inflicted with hard and blunt weapons which resulted in severe injury. The injuries attributed to the applicants fall under Section 337-A (i) PPC “Shajjah-i-Khafifa”, punishable with Daman, and imprisonment which may be extended up to two years as Ta’zir and 337-L(ii) P.P.C with imprisonment which may be extended up to two years as Ta’zir.

11. In a criminal case, it is by now well settled that grant of anticipatory bail to the accused could subvert or undermine investigative procedure/process that essentially includes 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.

12. The cumulative effect of the above discussion/ findings is that, while evaluating all available material tentatively, this Court has

come to the conclusion that specific and exact role is attributed to the applicants of causing iron-rod injuries on the person of the injured complainant, MLRs corroborate the contents of F.I.R; six injuries sustained by the complainant with hard and blunt substance, recovery of crime weapon is yet to be affected, it is yet to be established after recording of evidence pro and contra as to which party was aggressor, motive, being admitted scuffle is obvious, cannot be pressed into service at this stage to make a case of malice or malafide on the part of complainant, applicants are not entitled to the concession of pre-arrest bail.

13. In view of the above, the instant pre-arrest bail application is dismissed. Ad-interim bail granted to the applicants vide order dated 23.08.2021 is recalled.

14. The post-arrest bail of applicant in Cr. B.A. No. S- 729 of 2021 is adjourned to be taken up after two weeks.

15. Needless to mention that this is a tentative assessment for this bail application only, which shall not affect/influence the trial of this case in any manner.

Karar Hussain/PS\*

JUDGE