

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No.S-923 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants: Rajab Ali and another
through Mr. Muhammad Nawaz B. Jamali,
Advocate

Complainant: Yar Muhammad
through Mr. Zeeshan Ali Memon, Advocate

Ms. Safa Hisbani, Assistant P.G Sindh

Date of hearing & decision: 08.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J :- The Applicants through the captioned bail application have called in question the rejection of their Anticipatory Bail Application by the learned 1st Additional Sessions Judge, Badin vide order dated 12.10.2021.

2. Facts, in brief, are that complainant Yar Muhammad lodged FIR alleging therein that Rajab Shah and others are his relatives but are not on good terms with them due to some dispute. On 11.9.2021, the complainant, his brother Usman Shah left the house for opening the shop and reached the street of the house situated in the village Mir Shah at 6-00 AM. Accused persons reached the spot. Accused Rajab Shah and Umer shah were having hatchets and Hashim Shah and Usman Shah were having lathis. They abused and Rajab Shah gave hatchet blow on the head of complainant Yar Muhammad with intent to kill. The complainant raised his hand and he received an injury at the right arm, accused Umer Shah gave hatchet blow to Usman on the head, and other accused persons caused lathis blows on other parts of the bodies. Thereafter, Ali Nawaz son of Rabdino Shah reached the spot and saved the complainant side. Hence the FIR No.289 / 2021 was lodged with P.S Badin for offenses under Sections 324, 337 F(iii),337 F(ii),504,34 PPC.

3. Learned counsel for the applicants argued that the applicants are innocent and have falsely been implicated in the subject FIR which was lodged after a delay of 25 days; that the injuries alleged have been challenged before the medical board; that instant FIR is registered as counter version of FIR No.280 of 2021 under sections 324, 337-F(vi), 337-A(v), 114, 504, 34 PPC at the police station on 29.9.2021 registered by Ramzan son of Umer Shah pressurizing the applicants to withdraw from the landed property. He further contended that the case of applicants requires further inquiry and if bail is not confirmed the applicants will seriously suffer. Learned counsel submits that the corrigendum issued by Dr.Muhammad Yousuf Nohrio on 7.10.2021 shows that the injury caused to injured Usman son of Ramzan Shah was declared as Shajjah-i-Khafifah instead of Ghayr-Jaifah Mutlihimah, Photocopy available on record. 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. opposed the bail plea of applicants with vehemence and has argued that the names of applicants with the specific role are available in FIR; that counterblast of FIR is no ground for grant of bail; 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 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 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 the Honorable Supreme Court rendered in the case of *Gulshan Ali Solangi and others v. The State through P.G. Sindh* (2020 SCMR 249)

7. 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.

8. 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.

9. 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 the aforesaid sections of the Pakistan Penal Code which entail as per statute maximum punishment of seven to ten years.

10. 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 the commission of alleged offenses.

11. 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- 923 of 2021 arising out of Crime No.289 / 2021 of P.S Badin for offenses under sections 324, 337 F(iii),337 F(ii),504,34 PPC is hereby dismissed. Consequently, interim pre-arrest bail already granted to the applicants, vide order dated 15.10.2021, is hereby recalled.

12. The observation recorded hereinabove is tentative shall not prejudice the trial of either party.

JUDGE

Sajjad Ali Jessar