

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No.S-926 of 2021

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|-------------------------------|
|------|-------------------------------|

Applicants: Sajjan Leghari
through Mr. Mumtaz Sachal Awan advocate

Complainant: Ali Murad
through Mr. Ghulam Shabir Babar advocate

Ms. Safa Hisbani, Assistant P.G Sindh

Date of hearing: 01.11.2021

Date of decision: 01.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J :- The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned Additional Sessions Judge /Dadu vide order dated 13.10.2021.

2. The accusation against the applicant in the crime report is that on 26.9.2021 at 5.00 p.m, they all in connivance with each other attacked upon the complainat party and inflicted serious injuries on to the body parts of the injured, such report of incident was lodged with Police Station Drigh Bala district Dadu on the fourth day under Section 324, 114,147,148,149, 337-A (i), 337-F (i), 504 PPC. the applicant being aggrieved by the inclusion of his name in the aforesaid crime, approached trial court, whereby his pre-arrest bail was rejected on the premise that specific role was assigned to the applicant of causing injuries of iron rod, danda and pistol butt blow to Muhammad Malook and another. Finding no way, the applicant approached this court for such relief and succeeded in getting interim order in his favor on 15.10.2021.

3. Learned counsel for the applicant mainly argued that the applicant is innocent and has falsely been implicated in this case. The whole prosecution story is false and concocted; that complainant

lodged FIR after a delay of four days; that all P.Ws are interested being relatives. Learned counsel further argued that the injuries ascribed to the applicant are almost 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 applicant in the commission of alleged crime. He further submitted that in actual the instant FIR has been registered due to acrimony over a dispute between the parties as discussed supra, thus false implication of the applicant 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 applicant, still it does not fall within the prohibitory clause of Section 497(1) Cr.P.C. entitling the applicant for extra-ordinary relief sought for. Learned counsel lastly argued that Section 337-L(ii) applied as per Medical certificate issued by Medico-Legal Officer (MLO) on 5.10.2021 are not attracted; and the police malafidely at the instance of complainant party is trying to arrest and humiliate the applicant 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, applicant general participation, resulting into an injury on non-vital part of the body of injured, particularly in the absence of repeated iron rod, Danda and Pistol Butt blows/hard and blunt substance, squarely brings his case within the ambit of further inquiry. He prayed that interim pre-arrest bail already granted to the applicant 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 applicant with vehemence and has argued that pre-arrest bail of the applicant was turned down by learned Additional Sessions Judge Dadu as he absconded away from the court; that he was required to surrender before the court of law, however, he failed to do so; that extraordinary concession is not available to the applicant which is meant to save innocent and not the people like applicant and that Medico-legal Report (MLR) supports the version of complainant/injured witnesses, therefore, the applicant is not entitled to the concession of pre-arrest bail; that the

grounds taken by the applicant is 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 Honorable Supreme Court rendered in the case of Gulshan Ali Solangi 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 blunt weapon which resulted into severe injuries to the injured witnesses. The applicant is specifically nominated for the role of causing blunt weapon injuries on the person of injured Muhammad Malook and another. 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, 114,147,148,149, 337-A (i), 337-F (i), 504 and 337-L-II of the Pakistan Penal Code, 1860, hit by statutory prohibition contained in section 497(I) Cr.P.C, because of which, he cannot be released on pre-arrest bail. The crime weapons through which severe injuries were caused have been recovered from co-accused and pistol is yet to be recovered for which his arrest as per peculiar circumstances is necessary. In such circumstances, he is 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 the aforesaid sections of the Pakistan Penal Code which entails as per statute maximum punishment of seven to 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 applicant under Section 498 Cr.P.C. The Criminal Bail Application No. S- 926 of 2021 arising out of Crime No.25 / 2021 of P.S Drigh Bala is hereby dismissed. Consequently, interim pre-arrest bail already granted to the applicant, vide order dated 15.10.2021, is hereby recalled.

JUDGE

Sajjad Ali Jessar