

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

Cr. B. A. No. S- 725 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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03.12.2021

Mr. Amjad Ali Mangi, Advocate along with applicants  
Mr. Muhammad Aslam Memon, Advocate for complainant  
Mr. FayazHussainSabki, A.P.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through instant Criminal Bail Application, applicants Wajid Ali & Saif-ur-Rehman seek pre-arrest bail in Crime No. 10 of 2021 registered at police station Bhutto Forest under Section 147, 148, 149, 506, 337-F(i), 452, 337-F(vi), 337-L(ii), 337-U PPC.

2. Earlier vide order dated 27.08.2021 without touching merits of the case, the applicants / accused were admitted to interim pre-arrest bail and today it is fixed for confirmation or otherwise.

3. Brief facts of the prosecution case are that the complainant had a dispute with one Sadiq Ali and others over a plot. On 10.07.2021 complainant and his brother Inayat Ali were available at their house when at about 10:00 a.m. applicants Wajid Ali having an iron rod, Saif-ur-Rehman with brick, co-accused Sadiq Ali with brick, and 03 unidentified persons with pistols and sticks entered in their house, out of them co-accused Sadiq Ali and applicant Saif-ur-Rehman caused brick blows at the head of his brother Inayat Ali, who fell and his tooth was broken. Accused Wajid Ali caused iron rod blows to the complainant at his left arm and shoulders. Subsequently, after obtaining an order from learned Ex-Officio Justice of Peace, police registered the FIR on 28.07.2021.

4. Mr. Amjad Ali Mangi learned counsel for the applicants has argued that the FIR was registered after an inordinate delay; that complainant and witness received injuries during an accident and has falsely implicated the applicants in the FIR due to enmity; that medical evidence is contradictory with the ocular testimony, therefore allegations against the applicants require further inquiry; that

offenses do not fall within prohibitory clause of Section 497 Cr. P.C; that applicants / accused apprehend their arrest and humiliation at the hands of police, hence their pre-arrest bail may be confirmed. In support of his contentions, he relied upon the cases of Khalil Ahmed Soomro Vs. The State (PLD 2017 SC 730), Muhammad Faisal Vs. The State (2020 SCMR 971) and Muhammad Essa Vs. The State (2012 SCMR 646).

5. Mr. Fayaz Hussain Sabki learned A.P.G. assisted by learned counsel for the complainant has argued that the applicants are nominated in the FIR with specific role; that applicants have failed to show *malafide* on the part of complainant; that complainant and his brother have received grievous injuries; that delay in FIR has reasonably been explained; that medical evidence corroborates the version of complainant; that accused have been found guilty during the investigation; that applicants are not entitled to the extraordinary concession of pre-arrest bail. In support of his contention, he relied upon the case of Jumo Khan @ Muhammad Juman v. The State (2019 YLR 68 Sindh).

6. Heard arguments of learned Counsel for the parties and perused the record.

7. The tentative assessment of record reveals the following position of the case:-

- a) The applicants are nominated in FIR with allegations of house-trespass with the intention regarding commission of the offense
- b) Specific role of assault and causing injuries to the complainant and his brother has been assigned to them.
- c) The motive has also been described in the FIR.
- d) Applicants have failed to establish any mala fide on the part of the complainant.
- e) Complainant and his brother have received grievous injuries.
- f) The injuries as per MLC of Abdullah were seven in number, out of them injury No.4 was fracture and dislocation U/S 337-F (vi) PPC.
- g) PW Inayat Ali received eight injuries out of which injuries No.1, 2, 3, 4, 8 were U/S 337-A (i) while 5 & 6 were 337-L (ii) PPC.

- h) Prima-facie, the record reveals that the applicants and their accomplices caused multiple injuries to PW Inayat Ali on the vital part of his body. He also lost his tooth.
- i) The medical evidence does support the prosecution case.

8. It has been noticed that after promulgation of Criminal Law 2<sup>nd</sup> Amendment Ordinance, 1990, the concept of simple or grievous injury has been changed and a new definition of hurt has been introduced in Section 332, PPC in the following words: -

“332. Hurt (1) Whoever causes pain, harm, disease, infirmity, or injury to any person or impairs, disables, or dismembers any organ of the body or part thereof any person without causing his death, is said to cause hurt.

(2) The following are the kinds of hurt: -

- a) Itlaf-i-udw;
- b) Itlaf-i-salahiyyat-i-udw;
- c) Shajjah;
- d) Jurh; and
- e) All kinds of other hurts.

9. Section 333 PPC defines the term Itlaf-i-udw-, meaning thereby, whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-i-udw. The punishment is provided in section 334 PPC that whoever by doing any act to thereby cause hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person causes itlaf-i-udw of any person, shall, in consultation with the authorized medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality under the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir. Shajjah mentioned in Section 332 (2) (c), PPC has further been defined in Section 337, PPC in the following words: -

“337 Shajjah(i) Whoever causes, on the head or face of any person, any hurt which does not amount to Itlaf-i-udw or Itlaf-i-salahiyyat-i-udw, is said to cause Shajjah. (2) The following are the kinds of Shajjah, namely: -

- a) Shajjah-i-Khafifah;
- b) Shajjah-i-mudihah;

- c) Shajjah-i-hashimah;
- d) Shajjah-i-munaqillah;
- e) Shajjah-i-ammah; and
- f) Shajjah-i- damighah.

(3) Whoever causes Shajjah-

(i) without exposing bone of the victim, is said to cause Shajjah-i-khafifah; (ii) by exposing any bone of the victim without dislocating it, is said to cause Shajjah-i-mudihah;

(iii) by fracturing the bone of the victim and without dislocating it, is said to cause Shajjah-i-hashimah;

(iv) by causing fracture of the bone of the victim and thereby the bone is dislocated, is said to cause Shajjah-i-munaqillah;

(v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause Shajjah-i-ammah; and

(vi) by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause Shajjah-i-damighah.

10. Shajjah-i-Khafifah as per the definition in Section 337 PPC, is an injury caused to the victim without exposing his bone whereas Shajjah-i-mudihah is an injury where the bone of the victim is exposed without causing fracture, therefore, these are two different kinds of Shujjah under Section 337, PPC and its punishment is provided under Section 337-A (i) and 337-A(ii), PPC respectively. A very significant difference in the two clauses i.e. Section 337-A (i) and Section 337-A(ii), PPC is that offense “Shajjah-i-Khafifah” under Section 337-A(i) PPC as per Schedule 2 of the Cr. P.C is bailable and non-cognizable whereas the offense “Shajjah-i-mudihah” under Section 337- A(ii), PPC is non-bailable and cognizable offense.

11. The Medical Officer while examining the victims, has opined an injury under 337-F (i), 452, 337-F (vi), 337-L(ii), 337-U PPC, and the offense against the accused becomes non-bailable and cognizable.

12. Investigating officer present in court requests the custody of applicants for investigating the matter so far as collecting more evidence in the matter. If this is the position of the case, prima-facie, injury attributed to the applicants on the person of injured Inayat Ali and complainant can be termed falling under Section 337-F (i), 452,

337-F (vi), 337-L(ii), 337-U PPC and that falls within the purview of section 497(1) Cr.P.C.

13. Prima-facie, such conduct of the applicants, causing multiple injuries to the complainant party, does not require judicial protection to them under Section 498-A Cr.P.C. On the aforesaid proposition, I am guided by the judgment of Honorable Supreme Court rendered in the case of Mukhtar Ahmad v. The State and others (2016 SCMR 2064).

14. I would like to point out that extra-ordinary relief of pre-arrest bail is meant for innocent persons to save them from humiliation and disgrace at the hands of police. The purpose of this remedy is to protect the liberty and reputation of the citizens, particularly in a case where the circumstances reflect that it is a case of further inquiry based on material on record. The power to grant bail under section 498, Cr.P.C., is not additional or independent to Section 497, Cr.P.C., and even while granting pre-arrest bail the provisions contained under Section 497, Cr.P.C., are also to be kept in mind. However, grant of bail or its refusal is essentially a matter of discretion to be exercised judiciously and not arbitrarily, and the facts of every case are to be considered separately and independently. The reasonable and plausible ground must exist for grant of bail before arrest.

15. Primarily, the concept of pre-arrest bail was developed on three presumptions; firstly the accused is presumed to be innocent till he is found guilty, secondly, the accused should have a right to prepare his defense and prove his innocence before the trial Court and thirdly the accused should not be punished before the findings of his conviction rendered by the Court. The Hon'ble Supreme Court in the case titled Muhammad Jahangir Khan and others v. The State and others, (2020 SCMR 1270) has held that:

"Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail, Court can consider the merits of the case in addition to element of malafides/ulterior motives which has to be adjudged in the light of law laid down by this Court in the case law stated supra. As a consequence, courts of law are under a bounden duty to entertain a broader interpretation of "law of bail" while interpreting material placed before it in a more liberal manner to arrive at a conclusion which is

badly required due to apparent downfall in the standard of investigation.”

16. In the circumstances mentioned above, I do find a justifiable reason to recall the earlier bail order dated 27.08.2021 whereby the applicants were granted interim pre-arrest bail.

17. The observation made hereinabove is tentative shall not prejudice the trial of the accused.

18. This Cr. Bail Application stands dismissed.

JUDGE