

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

Cr. B. A. No. S- 1006 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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13.12.2021

Mr. Muhammad Saleem Leghari, Advocate for applicant
Mr. Imtiaz Ali Channa, Advocate for complainant
Mr. Shahzado Saleem Nahiyoon, D.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant Criminal Bail Application, applicants Lal Khan, Farooque, Zubair & Muhammad Hashim seeks post-arrest bail in Crime No. 25 of 2021, registered at police station Drigh Bala under section 324, 504, 114, 147, 148, 149, 337-A(i), 337-F(i) & 403 PPC.

2. Earlier vide order dated 27.10.2021, the applicants / accused were declined post-arrest bail by learned Additional Sessions Judge-I, Dadu, hence they have filed the instant Cr. Bail Application.

3. Per FIR, allegations against applicants/accused are that they duly armed with iron rods, pistol, Danda came at the place of wardat abused the complainant party, on the instigation of applicant/accused Muhammad Hashim, all remaining accused caused iron rod blows, danda and pistol butt blow to Muhammad Malook and Sajjan intending to commit murder. During the quarrel licensed pistol of Muhammad, Malook fell on the ground which was taken away by the accused persons, then accused persons went away while abusing. The complainant brought the injured to Taluka hospital Johi wherefrom he was referred to Hyderabad hospital, hence this FIR.

4. Mr. Muhammad Saleem Leghari, learned counsel for applicants/accused has argued that the applicants/accused are innocent and have falsely been implicated in this case due to dispute over matrimonial affairs; that the injuries sustained by the injured are on non-vital parts of the body; that there is delay of about five

days in lodging FIR without plausible explanation; that police after usual investigation submitted charge-sheet before the concerned Magistrate, discharged applicants/accused Muhammad Hashim and Farooque but learned Magistrate did not agree with the report of I.O and joined them in the case; that all the sections applied in FIR areailable except Section 324 PPC and the ingredients of Section 324 PPC would be determined at trial; that in the facts and circumstances, the case against the applicants/accused require further probe into their guilt as contemplated under sub-section 2 of Section 497 Cr.P.C.; that the applicants/accused are in custody and no more required for investigation, therefore, they may be enlarged on bail. In support of the case, learned counsel for applicants / accused has relied upon case laws reported in 2017 MLD 44 (Lahore), 2018 YLR 204 (Sindh), and 2021 SCMR 504.

5. On the other hand learned D.P.G. duly assisted by counsel for the complainant has opposed the post-arrest bail of applicants/accused and argued that the names of applicants/accused are nominated in the FIR; that applicants/accused in furtherance of their common object attacked upon the complainant party on the instigation of applicant/accused Muhammad Hashim, caused injuries to injured Muhammad Malook and took away licensed pistol of injured; that the injuries of injured Muhammad Malook are declared as 337-F(iii) and 337-F(vi) PPC which are non-bailable and no one can claim bail in non-bailable offenses; that PWs in their 161 Cr.P.C statements have fully implicated the applicants/accused in the commission of offense. They lastly argued that the applicants/accused are not entitled to the grant of post-arrest bail and their bail application may be dismissed.

6. I have heard learned counsel for the applicants, complainant who is present in person, and learned A.P.G and perused the material available on record.

7. 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. Applicants are behind the bars since their arrest on the accusation of instigation, causing blunt weapon injuries on the person of injured Muhammad Malook and another.

8. The question involved in the matter is whether the role of applicant Muhammad Hashim and Farooq alias Farooq Ahmed is the same as of co-accused Sajjan Leghari, whose pre-arrest bail was declined by this court vide order dated 1.1.2021 in Criminal Bail application No.926 of 2021. Primarily this Court simply declined pre-arrest bail to the co-accused Sajjan Leghari as his role in the said crime did not attract Section 498 Cr.P.C. However in the present case, the police in the investigation released the applicants namely Muhammad Hashim and Farooq alias Farooq Ahmed based on the statement of independent witnesses. During investigation nothing was recovered from their possession, therefore I am of the tentative view that the role of applicants named above is not akin to the role of co-accused Sajjan Leghari. I am of the tentative view that the case of applicants does fall within the ambit of “further inquiry” falling within the ambit of section 497(2) Cr.P.C, as the learned trial has to see the role of applicants in the commission of alleged offenses. In such circumstances, they are entitled to the concession of post-arrest bail in the aforesaid crime.

8. As a consequence of the facts and circumstances surfaced on the record, I am persuaded to grant post-arrest bail to the applicants under Section 497 Cr.P.C., in the aforesaid crime, subject to furnishing their surety in the sum of Rs.50, 000/- (Fifty Thousand) each and PR Bond in the like amount to the satisfaction of trial court.

9. The observation made hereinabove is tentative shall not prejudice the trial court at the time of trial.

JUDGE