

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-781 of 2021

Applicants : Muhammad Bux @ Nano Son of Rasool Bux, Wali Muhammad Son of Ghulam Muhammad, Yaseen Son of Muhammad Hassan and Muhammad Qasim Son of Muhammad Saleh, through Mr. Nihal Khan Lashari, Advocate.

Respondent : The State through Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Date of hearing : **18.11.2021**

Date of Order : **18.11.2021**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicants/accused above named seek their pre-arrest bail in Crime No.35 of 2021, under sections 452, 147, 148, 149, 114, 337-F(v), 337-A(iii), 337-A(ii), 337-F(vi), 337-F(i), 506/2, 504, P.P.C, registered at P.S Jhol, after their bail plea was declined by the learned IInd Additional Sessions Judge, Sanghar, vide order dated 05.06.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicants/accused are innocent and they have falsely been implicated in this case due to matrimonial affairs between the complainant party and them. He further contended that initially the complainant party approached to the learned Trial Court for protection but subsequently the said learned lower Court passed the order for registration of F.I.R; that the injuries received by the injured have been challenged before the Medical Board but the injured persons are not appearing before the said Board. He also contended that applicants are attending the learned Trial Court regularly and they are no more required for further investigation. He lastly prayed for confirmation of interim pre-arrest bail.

4. On the other hand learned Additional Prosecutor General, Sindh opposed for confirmation of interim pre-arrest bail.

5. I have heard learned counsel for the applicants, as well as Additional Prosecutor General, Sindh having also gone through the record available.

6. Admittedly, the names of the applicants are transpire in the F.I.R with specific role that applicant Muhammad Bux alias Nano inflicted blunt side hatchet injury to the daughter of the complainant namely Fatima, applicant Wali Muhammad inflicted lathi blow to his wife Mst. Sakina whereas applicant Yaseen also given lathi blow to her back. The ocular evidence finds support from the medical evidence. The injuries received by Mst. Fatima were declared by medical officer as 337-A(ii) and whereas the injuries of injured Mst. Sakina declared by the medical officer as 337-L(ii), 337-F(v) P.P.C. The PWs in their statements under section 161 Cr.P.C fully supported the version of the complainant. Learned counsel for the applicants failed to point out any ill-will, enmity or malafide ulterior motives on the part of the complainant or IO of the case which is the requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan [2019 S C M R 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

7. At bail stage only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicants Muhammad Bux @ Nano, Wali Muhammad and Yaseen with the alleged offence, therefore, they have failed to make out a good case for confirmation of interim pre-arrest bail. Consequently, the bail application to the extent of above named applicants Muhammad Bux @ Nano, Wali Muhammad and Yaseen is dismissed and the interim pre-arrest bail earlier granted to them vide order dated 16.06.2021 is hereby re-called.

8. Reverting to the case of applicant Muhammad Qasim, the role assigned against him is only instigation, as such, it is yet to be determined by the trial Court when the evidence will be recorded whether he has shared common intention or not. Reliance is placed on the case of **QURBAN ALI Vs. THE STATE and others [2017 SCMR 279]**.

Resultantly instant bail application to his extent is allowed and his interim pre-arrest bail is confirmed on same terms and conditions.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits. At bail stage, only a tentative assessment is to be made.

JUDGE

*Muhammad Danish**