

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

Criminal Bail Application No. S-421 of 2021

Criminal Bail Application No. S-435 of 2021

Mr. Mian Taj Muhammad Keerio, advocate for the applicants.  
Mr. Muhammad Akram Rajput, advocate for the complainant.  
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

Date of hearing: **06-9-2021**

Date of decision: **10-9-2021**

**ORDER**

**Khadim Hussain Tunio, J.**– By this common order, I intent to dispose of the above captioned bail applications as the same are the outcome of one and same FIR. Khalid Kaka, Gul Hassan and Asad, the applicants-accused, seek their confirmation of pre-arrest whereas Muhammad Yaqoob and Muhammad Ramzan seek their admission to post-arrest bail in case pertaining from FIR No.26/2021, registered under Sections 324, 337-A(i), 337-F(i), 504, 147, 148 and 149 PPC at Police Station Saeedabad, District Matiari. Earlier, the applicants-accused had sought the same reliefs before the learned Additional Sessions Judge-I/MCTC Matiari which were dismissed vide impugned orders dated 24-05-2021.

2. Facts, in brief, of the prosecution case are that on 12.02.2021, the complainant's brother Qamaruddin disclosed to him that on 07.02.2021, he was present at Survey No. 312 Deh Saeedabad near Gul Grammar School, main road Saeedabad along with his companions where they were approached by Gul Sher armed with a pistol, Kalid Kaka armed with a repeater, Yaqoob having an iron rod, Ramzan carrying a hatchet, Gul Hassan having a hatchet and Asad armed with a pistol. After badmouthing the complainant party, co-accused Gul Sher initiated by shooting at Saifullah, hitting him on his left arm and applicant Asad made a straight fire from his

pistol at Saifullah which hit him on his stomach. Yaqoob, Ramzan and Gul Hassan then inflicted blows from their respective weapons to Muhammad Achar and after injuring them, ran towards Qamaruddin and Nooruddin. The applicant Yaqoob hit Qamaruddin over the left eye with an iron rod, applicant Ramzan swung the hatchet at Noorudin, hitting him over his right shoulder and Gul Hassan hit Nooruddin over his right wrist with his lathi. Thereafter, the accused ran away while aerially firing.

3. Learned counsel for the applicant has argued that the applicants are innocent and the story, as narrated in the FIR, is false and fabricated; that the FIR is delayed by almost 21 days; that the place of incident is a thickly populated area, yet no independent witness has been cited; that in fact the incident was one where the complainant party attacked the applicants and injured them for which a counter FIR No. 19/2021 was registered by applicant Muhammad Yaqoob; that there are three FIRs lodged with PS Saeedabad of the same incident by three different complainants; that there are general allegations against the applicants and no specific allegations have been levelled against them; that the applicability of S. 324 PPC will be determined at trial and it is yet to be determined at trial as to which party was the aggressor and which party was aggressed upon; that the case of the applicant is one of further inquiry. In support of his contentions, learned counsel has cited the cases reported as *PLD 2018 SC 595*, *2011 SCMR 606* and *2010 SCMR 1219*.

4. On the other hand, learned counsel for the complainant contended that the applicants have been specifically named in the instant FIR which has been lodged as soon as possible after acceptance of application filed u/s 22-A & B Cr.P.C; that the applicants have committed a heinous crime and do not deserve the concession of bail. He, therefore, prayed for dismissal of the instant

Criminal Bail Application. Learned Assistant Prosecutor General, on the other hand, frankly conceded to the grant of bail to all the applicants besides that of applicant Muhammad Ramzan who allegedly caused a hatchet injury to PW Nooruddin.

5. Heard the learned counsel for the respective parties and perused the material available on record with their assistance.

6. Admittedly, the applicants-accused are named in the FIR which was lodged after considerable delay, though explained. On the date of the incident *i.e.* 07.02.2021, the applicants allegedly attacked upon the complainant party. All the applicants are specifically nominated in the FIR with specific roles of causing injuries to the complainant party. The case of applicant Asad, however, is distinguishable from that of the rest of the applicants and will be discussed first. Applicant Asad, armed with a pistol, fired at Saifullah and hit him in his abdomen. The said injury was declared by the medico-legal officer as punishable u/s **337-D** or otherwise "*Jurh Jaifah*" which is punishable by arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir, therefore constituting an offence falling within the prohibitory limb of S. 497 Cr.P.C. The injury attributed to him is on a vital party of the body as well. All the P.Ws, in their 161 Cr.P.C statements, have supported the version of the complainant and medical evidence is in line with the ocular version.

7. Now adverting to the case of the rest of the applicants namely Muhammad Yaqoob, Muhammad Ramzan, Gul Hassan and Khalid Kaka. Nooruddin had six injuries to his person. The said injuries were declared by the medico-legal officer as punishable **337-A(i)** or otherwise "*Shajjah-I-khafifah*" punishable by two (02) years and **337-F(i)** or otherwise "*Ghayr-Jaifah- damihah*" punishable by one (01) year. As for the one who caused these injuries, it is a

mystery as the same were not specifically mentioned in the FIR. Qamaruddin had two injuries to his person, one of which was attributed to Muhammad Yaqoob. The said injuries were declared by the medico-legal officer as punishable u/s 337-A(i) or otherwise “*Shajjah-I-khafifah*” punishable by two (02) years and 337-F(i) or otherwise “*Ghayr-Jaifah- damihah*” punishable by one (01) year. No specific role was attributed to applicant Khalid Kaka. Applicant Muhammad Ramzan, armed with a hatchet, swung at Nooruddin and hit him on his right shoulder. The said injury was declared by the medico-legal officer as punishable u/s 337-F (vi) or otherwise “*Ghayr-Jaifah- munaqqilah*” which is punishable by up to seven (07) years. As far as the case of applicants Muhammad Yaqoob, Muhammad Ramzan, Khalid Kaka and Gul Hassan is concerned, applicability of S. 324 and their vicarious liability need further inquiry at trial. Moreover, in a recent case, the Hon’ble Apex Court in **Criminal Petition No. 529 of 2021** dated 14.07.2021 titled *Iftikhar Ahmad v. The State* reiterated the long standing principle that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception. Furthermore, in presence of enmity, *prima facie*, the possibility of spreading the net wide by the complainant party so as to falsely entangle as many-as accused cannot be ruled out. In this regard, I am also fortified with the observation of Hon’ble Supreme Court of Pakistan while dealing with the case of ‘*Subeh Sadiq alias Saboo alias Kalu v. The State and others*’ reported in **2011 SCMR 1543**.

8. In view of the peculiar facts and circumstances of the case, I am of the considered view that the applicants Khalid Kaka, Gul Hassan, Muhammad Ramzan and Muhammad Yaqoob have made out their case for bail, as such interim pre-arrest bail already granted to the applicants Gul Hassan and Khalid Kaka is hereby confirmed on the same terms and conditions, whereas applicants Muhammad Ramzan and Muhammad Yaqoob are admitted to post-

arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (fifty thousand rupees only) and P.R bond in the like amount to the satisfaction of the learned trial Court. As for the bail of applicant Asad is concerned, he has miserably failed to make out his case for the grant of bail. Resultantly, bail application No. 421 of 2021 to the extent of applicant Asad is dismissed and interim pre-arrest bail granted to him is hereby recalled. Instant criminal bail applications are disposed of in the above terms.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case.

**J U D G E**