

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

Criminal Bail Application No.S-411 of 2021

Applicant : Muhammad Arif alias Shoaib through Mr.  
Muhammad Imran Arain, Advocate.

Complainant : Niaz Muhammad alias Lalan through Syed Zafar  
Ali Shah, Advocate.

The State : Through Ms. RameshanOad, A.P.G, Sindh.

Date of hearing : 17.09.2021.  
Date of order : 17.09.2021.

**O R D E R**

**KHADIM HUSSAIN TUNIO, J:-** Through captioned criminal bail application, the applicant Muhammad Arif alias Shoaib seeks his admission to post-arrest bail in Crime No. 24/2021 registered at Police Station Tando Ghulam Ali for the offences punishable u/s: 337-F(vi), 337-F(i), 337-L(ii), 504, 114 and 34 PPC.

2. The allegations, in nutshell, against the applicant are that on 25.02.2021, he along with the rest of the co-accused in prosecution of their common object attacked upon the complainant party with lathis and bricks, due to which they received various injuries, hence the FIR was lodged.

3. Learned counsel for the applicant argued that the prosecution story is false and fabricated and that the applicant has been falsely involved in the present case; that the complainant lodged the FIR after a delay of 10 days for which no plausible explanation has been provided; that the complainant has admitted enmity between him and the applicant's father and hence falsely roped him in the case; that the allegations levelled against the applicant are general in nature; that all the PWs are related to the complainant, hence interested and have been set up; and that the applicant is not a previous convict. He prayed for the grant of bail to the applicant.

4. Learned counsel for the complainant while opposing the grant of bail to the applicant argued that the applicant Muhammad Arif has been named in the FIR with the role of causing injuries to the injured Ahsan Ali; that the delay in the lodging of FIR has been explained as the complainant

lodged the FIR after the issuance of final medical certificate; that sufficient material is available on the record to connect the applicant with the commission of the offence. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicant.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. While it is an admitted position that the applicant has been named in the FIR with allegation of causing injury to the PW Ahsan Ali on his left arm, the same FIR is delayed by almost 10 days. The explanation, in this regard, was that the complainant lodged the FIR after issuance of the final medical certificate. Even then, the final medical certificate was issued on 04.03.2021, whereas the FIR was lodged on 07.03.2021, with a delay of 3 days despite the fact that the police station was at a distance of 10 to 12 kilometers. Besides, the injury attributed to the applicant on the left arm of PW Ahsan Ali has been declared by the medico-legal officer as punishable u/s **337-F (vi) (Ghayr-Jaifah-Munaqqilah)** which is punishable by up to seven (07) years and does not fall within the prohibitory clause of S. 497 Cr.P.C. Enmity has been admitted by both the parties over an agricultural piece of land, *prima facie*, the possibility of spreading the net wide by the complainant so as to falsely entangle as many accused as can-be cannot be ruled out. I am also fortified in my view by 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* (2011 SCMR 1543). Enmity, so admitted, is also a double edged sword, where in one instance, it fuels the fire and drives the crime, in the other instance it can lead one to falsely implicate an innocent to settle the score of vengeance. Nothing was recovered from applicant that would connect him with the commission of offence. In similar circumstances, the Hon'ble apex Court in cases of *Yaroo v. The State* (2004 SCMR 864), *Muhammad v. The State* (1998 SCMR 454) and *Pir Bux v. The State* (2012 SCMR 1955) had been pleased to grant bail to the applicants/accused. The investigation of the case has already been finalized and challan has been submitted, thus the physical custody of the applicant is no longer required.

7. The recent case before 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. The learned counsel for the State and the learned counsel for the complainant could not show this Court any such circumstance or conduct of the applicant that would bring his case under exception to the rule of granting bail in such offences.

8. For what has been discussed herein above, the applicant having made out his case for grant of post-arrest bail was granted the same vide short order dated 17.09.2021. These are the reasons for the same.

9. Needless to mention here that the observations made hereinabove are of tentative nature and shall have no effect upon the trial Court to decide the matter on merits.

**JUDGE**

Muhammad Danish Steno\*