

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

Criminal Bail Application No.S-178 of 2021

Criminal Bail Application No.S-263 of 2021

Applicants : Bhamro through Mr. Parshotam K. Khatri,  
advocate and,  
Doulat @ Doulat Ram through Mr. Ashar  
Majeed Khokhar, advocate.

Complainant : Sajjan through Mr. Heman Das, advocate.

The State : Through Ms. Rameshan Oad, Assistant  
Prosecutor General, Sindh.

Date of hearing : 27.08.2021.

Date of order : 27.08.2021.

**ORDER**

By this common order, I intend to dispose of the above captioned criminal bail applications filed by applicant Bhamro and applicant Doulat Ram as the same are the outcome of one and same FIR bearing No. 219 of 2020 registered with Police Station Umerkot City for the offences punishable u/s 302, 324, 114, 337-A(i), 337-F(i), 147, 148, 149 and 504 PPC.

2. The allegations, in nutshell, against the applicants are that on 14.12.2020, the applicants in pursuance of their common intention and object, at the instance of co-accused Moroo Bajeer, caused lathi and iron rod blows to the complainant party who were available at their plot, for which the FIR was lodged. Subsequently, injured Chandno and Rusho succumbed to injuries and Section 302 PPC was added.

3. Learned counsel for the applicants has argued that the prosecution story is false and fabricated and that the applicants have been falsely involved in the present case; that there is a 3½ hours delay in the lodging of FIR for which no plausible explanation has been provided; that

the applicants did not cause any injuries to the deceased; that the complainant has admitted enmity between him and co-accused Moroo and the present applicants are related to him hence falsely roped in the case; that the allegations levelled against the applicants are general in nature; that all other co-accused have already been granted bail by the trial Court; that the present case is of two versions, one of the applicants and one of the complainant party; that all the PWs are related to the complainant, hence interested and have been set up; and that the applicants are not previous convicts. They lastly prayed for the grant of bail to the applicants. In support of their arguments, learned counsel referred the case law reported as 1995 MLD 90, 2001 YLR 1045, PLD 2009 SC 58 and 2018 PCrLJ Note 117.

4. Learned counsel for the complainant while strongly opposing the grant of bail to the applicants argued that the applicants have been named in the FIR with the role of causing injuries to the complainant party. He has referred the case law reported as 2020 YLR 919. 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 applicants have been named in the FIR with allegations of causing injuries to the PW Hemoon and complainant Ramoon, there appears to be two versions of the story. Per the complainant's version of the incident, the complainant party showed no aggression, however were aggressed upon by the applicants and also injured. The present case has two versions, either one having the other party as the aggressor. In the wake of two versions, where it is alleged that the case was of a free-fight between the parties, question arises as to whether the injuries to Hemoon and Ramoon were a consequence of aggression or retribution. Such a question can only be answered by the trial Court after examination of evidence as this Court cannot indulge itself in the same and can only make prudent assumptions, which may tilt the scales of justice in favour of bail over jail.

For the foregoing reasons, the cases of two versions are generally regarded appropriate for the grant of post-arrest bail more importantly, when the accused seeking such remedy is not ascribed some exceptional aggression. In this respect, reliance is placed on the case law reported as *Shoaib Mehmood Butt v. Iftikhar-ul-Haq and 3 others* (1996 SCMR 1845) wherein the Hon'ble Apex Court has been pleased to observe as under:-

“In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party case law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497 (2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed.”

(emphasis supplied)

Further guidance regarding the same principle is sought from the case of *Muhammad Shahzad Siddique v. The State and another* (PLD 2009 Supreme Court 58).

7. Moreover, enmity has been admitted by both the parties and a civil litigation was also pending between the parties, *prima facie*, the possibility of spreading the net wide by the complainant party so as to falsely entangle as many accused as can-be 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* (2011 SCMR 1543). As far as the recovery from applicant Bhamro is concerned, the same was after two days of his arrest from an open plot that *everyone* had access to. At this stage, it can safely be said that the same is inconsequential to their case of bail. Similarly, nothing was recovered from applicant Doulat Ram that would connect him with the commission of offence. From further perusal of record, it is apparent that the role of causing injuries to deceased has not been assigned to the applicants; therefore, question of vicarious liability requires further inquiry and shall be determined by the trial Court. 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 applicants is no longer required. All the co-accused, who were assigned similar roles, have also been enlarged on bail by the trial Court.

8. In a case of *Wajid Ali v. The State and another* (2017 SCMR 116), the Honourable Apex Court has observed as under:--

"5. From the contents of the FIR, it cannot be outrightly said that there was a common intention to commit crime. It prima facie appears that repairing of the common wall was the reason that provoked the accused. The conclusion that there was common intention can only be reached after the evidence in the matter comes on the record. So far as the role of causing injury on the person of the complainant is concerned, it is admitted position that the said injury was reported to be ghair jaifa. The petitioner in this view of the matter cannot be kept behind the bars for an indefinite period. In the circumstances, the petitioner has made out a case for post-arrest bail. This petition is therefore converted into appeal and is allowed and the impugned order is set aside. Petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.300,000/- with two sureties in the like amount to the satisfaction of Trial Court".

9. For what has been discussed herein above, the applicants have made out their case for grant of post-arrest bail and consequential of the above, they were granted bail vide short order dated 27.08.2021. These are the detailed reasons for the same.

10. 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**

Irfan