

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2070 of 2021

Applicants : (1) Asif Masih s/o Boota Masih (2) Edison
s/o Asif and (3) Harrison s/o Asif,
through Mr. K Jehangir, advocate

Respondent : The State, through Mr. Faheem Hussain
Panhwar, D.P.G.

Complainant : Arsalan s/o. Anwar, through
Mr. Aftab Ahmed Satti, advocate

Date of hearing : 02.03.2022

Date of order : 02.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Cr. Bail Application applicants/ accused Asif Masih s/o Boota Masih, Edison s/o Asif and Harrison s/o Asif seek pre-arrest bail in Crime No. 785 of 2021, registered under Section 334, 337-A(i), 337-F(vi), 34, P.P.C. at P.S. Boat Basin, Karachi. Their earlier bail application for the same relief bearing No. 3615 of 2021 was heard and dismissed by the learned Additional Sessions Judge-XI, Karachi-South vide order, dated 21.10. 2021. They were admitted to interim pre-arrest bail by this Court vide order, dated 08.11.2021, now the matter is fixed for confirmation of interim bail or otherwise.

2. It is alleged that on 19.09.2021 at 2300 hours, the complainant forbade the applicants from kidding with him on that they abused him and caused him fist, kicks and sticks blows on different parts of his body, who received injuries on his lips and dislocation of a tooth, for which the applicants were booked in the instant F.I.R.

3. Heard learned counsel for the parties and perused the material available on record.

4. It appears from the perusal of the record that the alleged incident took place on 19.09.2021 and the F.I.R. was lodged by the complainant with delay of 13 days on 02.10.2021, for that no plausible explanation is available on record; hence, deliberation and consultation before lodging of the F.I.R. for implicating the applicants, who are father and sons inter se, malafidely and for ulterior motive cannot not be ruled out. The alleged offence under section 337-A(i), P.P.C. is bailable being punishable with imprisonment for two years, while offence under section 337-F(vi), P.P.C. being punishable with imprisonment for seven years does not fall within the prohibitory Clause of section 497 Cr.P.C., The offence under section 334, P.P.C. (*Itlaf-i-Udw*) is punishable with *qisas* and if the *qisas* is not executable keeping in view the principles of equality in accordance with the injunction of Islam, the offender shall be liable to *arsh* and may also be punished with imprisonment for a term which may extend to ten years as *ta'zir*.

5. The term *Itlaf-i-Udw* has been defined under section 333, P.P.C. as "*dismemberance, amputation and severs any limb or organ of the body*" Hence, offence under section 334, P.P.C. is made out if any organ or limb is amputated whereas fingers of hand or toes of foot are not organs and similarly, tooth or teeth are not organ, but the whole jaw is an organ. As such, the applicants' case at the most falls under section 337-U, P.P.C., which provides *arsh* for causing *Itlaf* of a tooth, other than a milk tooth, one-twentieth of the *diyat*.

6. For the foregoing facts and reasons, the interim bail granted to the applicants vide order, dated 08.11.2021, is confirmed on the same terms and conditions.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. However, in case the applicants misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

JUDGE

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