

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

Criminal Bail Application No.S- 889 of 2020
Criminal Miscellaneous Application No.S- 453 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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16.08.2021.

Applicants Faiz Muhammad and Ali Hassan are present on interim pre-arrest bail.

Mr. Muhammad Jameel Ahmed, Advocate for applicants in both matters.

Mr. Mian Taj Muhammad Keerio, Advocate for complainant in Criminal Bail Application No.S-889/2020 and for respondents in Criminal Miscellaneous Application No.S-453/2020, who are also present.

Mr. Shahid Shaikh, Additional Prosecutor General for State alongwith IO/ASI Muhammad Misri Khahi.

NAIMATULLAH PHULPOTO, J:- Applicants / accused Faiz Muhammad and Ali Hassan seek pre-arrest bail in Crime No.30/2020 registered at P.S. Khahi for offences u/s 324, 506(2), 504, 114, 147, 148, 149 PPC. Previously, the applicants / accused applied for the same relief before the learned Additional Sessions Judge, Khipro, the same was rejected vide order dated 27.08.2020.

2. Brief facts of the prosecution case are that on 15.07.2020, complainant and his brother Mubarak @ Majno Hingorjo and nephews Manzoor Ali, Ghafoor Ali, both sons of Mubarak were present at their shop when at about 0430 p.m, one Corolla car appeared there. It is alleged that applicant Ali Hassan son of Faiz Muhammad Mari was driving the car and alighted from car, 2. Faiz Muhammad son of Ali Hassan having pistol in his hand, 3. Suhbat son of Ali Nawaz @ Ayoo having lathi in his hand, 4. Sher Ali son of Sulleman having hatchet in his hand and 5. Kandho son of Muharam having hatchet in his hand, all by cast Mari alighted from the car and started abusing the complainant party. Complainant`s brother Mubarak asked them, not to use the abusive language upon which it is stated that accused persons got annoyed and upon instigation of accused Ali Hassan, it is alleged that accused Faiz Muhammad with intention to kill opened the straight fire upon his brother Mubarak

and fire hit him at left shoulder and he fell down and blood started oozing from injury and then accused Suhbat caused lathi to Manzoor Ali on his head then Sher Ali and Kundho also hit blows with back side of hatchets to nephew Manzoor and Munawar on their arms, fingers and hands. Then, on the cries, accused persons left the place of incident in the above said car towards southern side. Complainant arranged for transport and took the injured to Taluka Hospital Khipro for treatment. Thereafter, FIR was lodged against the accused at P.S. Khahi u/s 324, 506(2), 504, 114, 147, 148, 149 PPC.

It may be mentioned here that prior to registration of this case / crime, an FIR bearing No.29 of 2020 for offences u/s 324, 114, 506/2, 504, 34 PPC was lodged by Ali Sher on 21.07.2020 at 1500 hours at same police station regarding the same incident.

3. Learned counsel appearing on behalf of the applicant informed the Court that accused Mubarak @ Majnoo and others in the counter case / crime No.29/2020 have already been granted pre-arrest bail by the trial court vide order dated 27.08.2020 and the complainant Ali Sher has filed Criminal Miscellaneous Application No.S-453/2020 for cancellation of their bail which by this single order, is also being decided.

4. Mr. Muhammad Jameel Ahmed, learned advocate for the applicants / accused Faiz Muhammad and Ali Hassan mainly argued that the role assigned to applicant Faiz Muhammad is causing firearm injury on the left shoulder of PW Mubarak @ Majnoon and the role assigned to applicant / accused Ali Hassan was mere his presence at the time of incident. It is mainly contended that this is the case of counter version, yet it is to be determined that which party is aggressor. In support of his submissions, reliance has been placed upon the case of Saqib and others v. The State and others (2020 SCMR 677).

5. Mr. Mian Taj Muhammad, learned counsel appearing for complainant opposed the application for pre-arrest bail mainly on the ground that specific role has been assigned to applicant / accused Faiz Muhammad in the commission of

offence and the alleged offence falls within the prohibitory clause of Section 497(1) Cr.P.C.

6. Mr. Shahid Shaikh, learned Additional Prosecutor General admits that this is a case of counter version. However, oppose the grant of pre-arrest bail to accused Faiz Muhammad on the ground that firearm injury has been attributed to him. Investigation Officer present in court also states that this is a case of counter version, investigation has been completed and the challan has been submitted before the competent court of law.

7. I have heard the learned counsel for the parties and perused the relevant record.

8. It is an admitted fact that this is a case of counter version. In the counter case bearing crime No. 29/2020 registered at P.S. Khahi for offences u/s 324, 114, 506/2, 504, 34 PPC, concession of pre-arrest bail has already been extended to accused Manzoor Ali, Mubarak @ Majno, Shoukat Ali and Sher Muhammad by the trial court vide order dated 27.08.2020. In the counter case, which is in hand bearing crime No.30/2020, the applicants Faiz Muhammad and Ali Hassan have applied for pre-arrest bail. The concession of pre-arrest bail in crime No.30/2020 has already been extended to applicants / accused Suhbat, Sher Ali and Kundho but it has been refused to applicants Faiz Muhammad as the role assigned to him is of causing firearm injury to PW Mubarak @ Majno and the bail plea of the applicant Ali Hassan has been refused because of his presence at the time of incident. During incident both the parties sustained injuries but those injuries had not been disclosed and suppressed in the FIRs lodged by both the parties. Challan in both the cases have already been submitted before the concerned court. It is also for the trial court to determine as to which party is aggressor and which party is aggressed upon of-course which can only be determined after recording evidence of both the parties. Case against the applicants / accused calls for further inquiry within the ambit of Section 497(2) Cr.P.C. Rightly reliance has been placed upon the case of Saqib and others (Supra). The relevant portion whereof is reproduced as under:-

“4. During the course of arguments, it has been noted by us and as confirmed by the learned State counsel under instructions of the police officer present with record that during the occurrence two persons from petitioner side namely Saqib and Majaz, petitioners Nos. 1 and 3 also sustained injuries but those injuries have not been disclosed in the FIR. Learned counsel appearing on behalf of State also confirms that a cross version in this regard was also recorded and Challan in both cases i.e. FIR and cross version has been submitted. In these circumstances, it is for the trial court to determine as to who was the aggressor and who was aggressed upon, of course, after recording evidence of the parties. As for now, case against the petitioners calls for further enquiry falling within the ambit of section 497(2), Code of Criminal Procedure.”

9. Serious malafides on the part of complainant and police have been alleged. Accused in counter case more or less in similar circumstances have already been granted the concession of pre-arrest bail. Present applicants / accused have also made out a good case for the same relief. Accordingly, interim pre-arrest bail already granted to the applicants / accused Faiz Muhammad and Ali Hassan on 11.09.2020 is hereby confirmed on same terms and conditions.

10. In the view of above, Mr. Muhammad Jameel Ahmed, learned counsel appearing on behalf of the applicant / complainant in Criminal Miscellaneous Application S-453/2020 for cancellation of bail of respondents Mubarak @ Majno and others, does not press the same which is accordingly dismissed as not pressed however, learned trial court is directed to decide the case on merits within 03 months under intimation to this court.

In the view of above, both applications are accordingly disposed of.

JUDGE

Tufail