

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

Cr. B.A. No.S-508 of 2022

1. For order on office objection
2. For hearing

16.05.2022

Mr. Wishan Das Kolhi, Advocate for the applicants

Applicants are present on interim pre-arrest bail

Ms. Rameshan Oad, A.P.G

Complainant Shamshad Ali present in person

ORDER

SALAHUDDIN PANHWAR, J.-Through instant bail application, applicants Hakeem Khan, Khan Muhammad and Faiz Muhammad seek pre-arrest bail in crime No.24 of 2022, registered at Police Station Dehi, under sections 395, 342, 448, 35 PPC. Earlier their bail plea was declined by the learned Ist. Additional Sessions Judge, Badin vide his order dated 14.04.2022.

2. Relevant facts of the case as stated in the FIR lodged by complainant Shamshad Ali on 01.04.2022, are that he is landlord/owner of some land situated at Tando Bago-Jhudo road where market, hotel and other shops are constructed. On the night of 01.04.2022 at 02:00 a.m. accused Khan Muhammad (applicant), Niaz Muhammad, Muhammad Khan, Faiz Muhammad (applicant), Hakeem Khan (applicant) alongwith other co-accused duly armed with deadly weapons as well as hatchets came at the spot and on the point of their respective weapons took away Tractor, Solar Battery and other valuable articles of the complainant lying there. Such incident was reported to the police, hence the aforesaid FIR was lodged against the applicants and others.

3. Learned counsel for applicants, *inter alia*, contends that applicants have falsely been implicated in the instant case; that there is inordinate delay in lodging of F.I.R; false implication of applicants with due deliberation and consultation cannot be ruled out in the circumstances of the case; that no incriminating article has been recovered from any of the applicant; that no

specific role has been assigned to the applicants; that there are general allegations; that all prosecution witnesses are interested, hence there is no probability of tempering with their evidence.

4. Learned A.P.G. as well as the complainant present in person opposed the application on the ground that applicants have committed the alleged offence; no malafide or ulterior motive regarding false implication of applicants either by police or by the complainant is shown, hence applicants are not entitled for pre-arrest bail.

5. Heard learned counsel for the applicants, learned A.P.G as well as the complainant in person and perused the record.

6. Admittedly, there is delay of 17 hours in lodgment of the FIR, which has not been plausibly explained by the prosecution; that there are general allegations against the applicants and no specific role has been assigned to them; that nothing incriminating articles have been recovered from the possession of the applicants. Moreover, offences under Sections 342 & 448, P.P.C. are bailable. However, Section 395, P.P.C. provides that whoever commits dacoity shall be punished with imprisonment for life, or rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to fine. The sentence not less than four years was incorporated by Ordinance III of 1980 on 3rd February, 1980 which makes the intention of the legislature very clear that when the case is registered under section 395, P.P.C. the Court cannot award sentence less than four years and can award sentence not more than ten years. In such circumstances and in view of the dictum laid down in case of *Shehzore and another v. The State* (2006 YLR 3167), lesser punishment is to be considered for purpose of bail. In any event grant of pre-arrest bail is an extra-ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore an accused person seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide. In the present case the FIR was lodged after an inordinate delay for which no plausible explanation has been given in the FIR, even no incriminating article has been recovered from any of the applicant and only general allegations have been levelled against the applicants. The learned counsel for the complainant has not been able to satisfactorily controvert the points raised by the learned

counsel for the applicants. The case is one of further enquiry and the probability of humiliating the applicants cannot be ruled out at this stage.

7. In view of what has been discussed above, the bail application is allowed and the interim pre-arrest bail earlier granted to the applicants by this Court vide order dated 21.04.2022 is hereby confirmed on same terms and conditions. However, the applicants are directed to attend the trial Court regularly. If the applicants or any of them fails to appear before it, the trial Court would be at liberty to take action against him/them in accordance with law without making any reference before this Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

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