

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Bail Application No.S- 325 of 2021

For hearing of Bail Application

Mr. Bashir Ahmed Shar Advocate along with applicants.
Mr. Aftab Ahmed Shar, Additional P.G for the State.
Mr. Abdul Wahab Shaikh Advocate for Complainant.

Date of Hearing: **02-08-2021**

ORDER

Muhammad Saleem Jessar J. Through this bail application, applicants Allah Rakhiyo alias Muhammad Rakhiyal and Naseer seek pre-arrest bail in Crime No.28 of 2021, of P.S, Khuhra-Khairpur, under Sections 506/2, 337A(i), 337F(i), 504, 149 PPC. Bail plea preferred by the applicants before first forum was declined by means of order dated 21.05.2021 vide Crl. Bail Application No.1095 of 2021.

2. Since the facts of the prosecution case are already mentioned in the FIR as well as order passed by the Court below, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicants submits that the FIR is delayed for about three days and the offence with which applicants stand charged carries maximum punishment upto 07-years. He further submits that case against the applicants does not fall within the prohibitory clause of Section 497 Cr.P.C; besides case has been challaned and they have been appearing before trial Court regularly.

4. Learned APG for the State in view of above legal position does not oppose bail application.

5. Learned counsel appearing on behalf of the complainant opposes bail application on the ground that after grant of interim bail by this Court, applicants misused the concession extended to them by making assault upon the house of the complainant party; besides they have also got registered false criminal case bearing Crime No.59 of 2021 P.S, Khuhra against the complainant party. Copy of said FIR is placed on record through statement.

6. Heard arguments and perused the record. Admittedly, FIR was delayed for about three days, whereas, distance between the police station and place of occurrence is only half kilometre, for which no plausible explanation has been furnished. Offence with which applicants stand charged carries maximum punishment upto 07-years and except Section 506/2 PPC, all sections applied under the FIR are bailable. Case is being tried by the Court of Judicial Magistrate where after recording of evidence of the parties if prosecution may prove its charge against the applicants even then the punishment of more than three years cannot be visualized. As far as separate FIRs lodged by both parties against each other is concerned, both FIRs are of different offences and carry different punishment, therefore, both FIRs have no relevancy with the case in hand.

7. Under the circumstances of the case and in view of the dicta laid down by the Hon'ble Supreme Court in case of Muhammad Tanveer v. The State (PLD 2017 SC 733) and an unreported order dated 14.07.2021, passed on Crl. Petition No.529 of 2021 re: Iftikhar Ahmed v. The State, case against the applicants requires further enquiry within the meaning of sub-section 2 of Section 497 Cr.P.C. Consequently, instant Bail Application is hereby allowed and the interim pre-arrest bail earlier granted to the applicants by this Court is hereby on confirmed on same terms and conditions. Applicants present in person are directed to continue their appearance before trial Court till final decision of the main case. Trial Court is directed to conclude the trial within shortest possible time under intimation to this Court.

8. Observations made herein above are tentative in nature and may not influence the case of either party before the trial Court.

J U D G E

Ahmad