

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 739 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of case.

16.10.2018

Mr. Ajab Khan Khattak, Advocate a/w applicants
Mr. Imtiaz Ali Samoo, Advocate a/w complainant.
Mr. Abrar Ali Khichi, DPG for State.

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Omar Sial, J. The applicants have sought pre-arrest bail in crime number 155 of 2018 registered under sections 147, 148, 149, 324, 427, 506-B and 337-A(i) P.P.C. at the Super Highway Industrial Area police station in Karachi. Earlier, their pre-arrest bail applications were dismissed by the learned 5th Additional Sessions Judge, Malir, Karachi vide his order dated 18-5-2018.

2. The background to the case is that one Irshad Khan lodged the aforementioned F.I.R. on 12-5-2018 stating therein that earlier that day a quarrel had broken out between his brothers named Miskeen Khan and Sher Khan with another person named Bakhti. The complainant went to the spot to settle the dispute but was beaten and abused by the people present on the scene. Finally the matter was settled and he returned to his office along with his brothers. While he was sitting in his office, Khan Bahadur, Khan Hassan, Haji Khan Mohammad, Dost Mohammad, Dost Suleman, Sakhi Jan (all the applicants in this bail application) and one other Sher Bahadur came there along with twenty-twenty five other persons and started to beat the complainant party. Most of the assailants held cudgels while applicant Hassan and applicant Dost Mohammad had pistols and fired upon the complainant party with the intention to kill them. Several were injured.

3. I have heard the learned counsel for the applicants as well as the learned counsel for the complainant and the learned D.P.G. My observations are as follows.

- (i) It appears that both parties, the complainant and the accused, do business at the Sabzi Mandi. Both have been at loggerheads for some time ostensibly over the affairs of the Sabzi Mandi. The accused party has also filed an F.I.R (being number 156 of 2018) regarding the same incident which is also pending investigation. It is yet to be determined as to who was the aggressor

and who was the aggressed. In light of the foregoing background, malafide and throwing the net wide by the complainant party cannot be conclusively ruled out at this stage.

- (ii) The contents of the F.I.R. prima facie reflect exaggeration on the part of the complainant. It does not appeal to logic that the accused party would have pistols and shoot at the complainant party in a small office with the intent to kill them yet fail in achieving this object. Further, it seems rather unlikely that if thirty odd people had come and beat the complainant party with cudgels, the complainants would have even survived the beating. The learned counsel was asked that in light of the record and medical reports how was a charge of section 324 P.P.C. being made out prima facie. Learned counsel however was unable to satisfy the court in this regard. This issue no doubt will have to be finally determined by the learned trial court once the parties have had an opportunity to adduce their respective evidence. Except for the charge under section 324 P.P.C. the remaining sections are bailable or falling within the non-prohibitory clause of section 497 Cr.P.C.
- (iii) One of the accused namely Sher Bahadur has been granted bail by the learned trial court on 2-6-2018 and such grant of bail has not been challenged by the State or the complainant. Exactly the same allegations have been leveled against Khan Bahadur. On the ground of consistency too the applicants are entitled to the grant of bail. Further, the case against the applicants appears to require further enquiry as well.
- (iv) Above are the reasons for the short order dated 11.10.2018 in terms of which the interim pre-arrest bail granted to the applicants on 23-5-2018 was confirmed on the same terms and conditions.

JUDGE