

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S- 1099 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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11.11.2022.

Mr. Mazhar Ali Leghari, Advocate for applicant alongwith applicant (on bail).

Ms. Sana Memon, A.P.G for State.

Complainant present in person.

ORDER

Muhammad Saleem Jessar, J.- Complainant present in person submits that he has no means to engage counsel on his behalf; however, has shown trust upon the prosecution.

2. Through instant bail application, applicant Malhar seeks his admission on pre-arrest bail in Crime No.36 of 2022 registered at P.S Chachro under Sections 337-F(iv), 337-A(i), 337-F(ii), 147, 148, 149 & 504 PPC.

3. After registration of case, the investigation was carried out and on completion of legal formalities challan was submitted before the competent Court of law. Applicant preferred Criminal Bail Application No.357 of 2022 before the Court of Sessions, Tharparkar at Mithi, where after hearing the parties, the request for bail was turned down through order dated 17.10.2022 hence this bail application.

4. The facts of case are already mentioned in FIR as well as in memo of bail application hence need not be reiterated.

5. Learned counsel for applicant submits that applicant after furnishing surety before this Court has surrendered before trial Court vide Criminal Case No.63/2022 (Re-The State v. Malhar and 04 others) therefore, has not misused the concession extended to him. In support of his contention he places on record a copy of case diary dated 07.11.2022, taken on record. Learned counsel further submits that there are cross cases in between the parties and on same date viz.

20.09.2022, applicant Malhar had also sustained injuries on his person at the hands of complainant party vide FIR No.40/2022 PS Chachro u/s 337-F(v), 337-F(i), 337-L(ii), 147, 148, 149, 114, 506(ii), 504 PPC. In support of his contention he places on record the copy of said FIR, taken on record. He further submits that applicant Malhar was examined by Medicolegal Officer Taluka Hospital Chachro on 20.09.2022 and per final medicolegal certificate bearing No./MS/TH/CH:-706/10 dated 20.10.2022, applicant had also sustained multiple injuries on his person. In support of his contention he places on record the copy of said medical certificate. He further submits that role attributed to applicant is that he allegedly caused hatchet blow to PW Bharmal which landed on his head; however, injury allegedly sustained by PW Bharmal has been declared to be punishable u/s 337-A(i) PPC which is bailable. Hence submits that by granting this bail application, interim pre-arrest bail already granted to applicant may be confirmed on same terms and conditions. In support of his contentions, learned counsel places reliance upon the cases reported as MUHAMMAD IJAZ v. The STATE and others (2022 SCMR 1271) and MUNIR MASIH and 3 others v. The STATE and others (2014 YLR 1159).

6. On the other hand, learned Assistant Prosecutor General appearing for State opposes bail application on the ground that injured PW Bharmal sustained sharp side hatchet blow on his head at the hands of applicant.

7. Heard. Record perused.

8. Admittedly, the incident as shown had occurred on 20.09.2022 whereas report thereof was lodged on 16.10.2022 i.e. after the delay of about 16/17 days though the distance between Police Station and place of incident is 12 kilometers; however, no any plausible explanation has been furnished by prosecution for such an inordinate delay. There are counter cases in between the parties and per admission made by complainant present in person that they have also been granted ad-interim pre-arrest relief. Case is being tried by the Court of Judicial Magistrate where after recording evidence of prosecution witnesses, if prosecution may succeed to prove its charge against applicant even then the punishment of more than 03 years cannot be visualized. The

injuries allegedly sustained by injured are almost on non-vital part of body whereas injuries sustained by him are on his vital part has been declared to be non-bailable. In the case of MUHAMMAD IJAZ (Supra) the Honourable Supreme Court of Pakistan while dealing with identical case has held as under:-

“It is an admitted position that the FIR in the instant case was registered after a delay of three days for which no plausible explanation has been given. As per the contents of the crime report, the allegation leveled against the petitioner is that he caused blow on the right hand of the complainant's son with an iron rod due to which it got fractured/broken. However, it is the case of the petitioner that the complainant party was the aggressor and in the incident the petitioner had also sustained injuries on his head, nose and left arm, which were suppressed. The petitioner was got medically examined on the same day i.e. 29.02.2020 and the medico legal examination certificate confirms the factum of receiving injuries by the petitioner. We have been informed that the petitioner immediately approached the Police for registration of FIR and after hectic efforts his cross-version could be recorded and the complainant's son has been found guilty in cross-version.”

9. In the light of above dictum laid down by Honourable Supreme Court of Pakistan and the facts and circumstances of the present case, I am also fortified with the dictum laid down by Honourable Supreme Court of Pakistan in the case of MUHAMMAD TANVEER v. The STATE and another (PLD 2017 Supreme Court 733). The upshot of above discussion is that applicant has made out a case for grant of pre-arrest bail and the case against applicant requires further inquiry within the meaning of sub-section 2 to Section 497 Cr.P.C. Consequently, instant bail application is allowed and the interim pre-arrest bail already granted to applicant on 20.10.2022 is hereby confirmed on same terms and conditions.

JUDGE

