

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 1508 of 2020

Date order with signature of Judge

For hearing of bail application.

3rd December, 2020

Mr. Muhammad Saleem, Advocate for applicants.
Mr. Ch. Muhammad Abu Bakar Khalil, Advocate for complainant.
Mr. Muntazir Mehdi, DPG.

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Omar Sial, J: This application seeking pre-arrest bail has been filed by 5 children of the Late Aslam Khan, namely, Gul Nawaz Khan, Bakhtawar, Meer Sala Khan, Shah Khalid Khan and Shah Nawaz Khan. Earlier, their application seeking bail was dismissed on 28-9-2020 by the learned 6th Additional Sessions Judge, Karachi West.

2. F.I.R. No. 295 of 2020 was registered on 5-9-2020 against the applicants under sections 384, 324, 109 and 34 P.P.C. at the Mominabad police station on the complaint of Shah Fahad Khan, the 6th son of Late Aslam Khan. He recorded that he was living with his brothers, the applicants, and three others, namely Adil Khan, Harib Khan and Haris Khan. The applicant told his brothers that he wanted to live with his parents together with Adil, Haris and Harib. This talk of breaking up the family seems to have upset the brothers and an altercation occurred in which applicant Bakhtawar allegedly fired a shot from his pistol which fire hit the complainant on his left thigh. The complainant in the FIR further alleged that the fire had been shot on him upon the instigation of one Fazalullah, who had earlier demanded extortion money from the complainant. In the incident Adil was slapped by one of the brothers and then Adil brought the complainant to the police station where the FIR was registered.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned DPG. My observations are as follows.

4. The incident appears to have occurred due to an inheritance dispute upon the demise of the father of the applicants and complainant. There appear to be allegations and counter allegations on part of both the parties, both accusing the other party for not respecting their late father's wishes. In such circumstances malafide on the part of the complainant in filing this case cannot be conclusively ruled out at this preliminary stage.

5. General allegations have been raised against the applicants except against Bakhtawar, who is alleged to have fired a shot at the complainant. The alleged fire has hit the complainant on his left thigh, a non vital part of the body. If the intention of the applicants was to murder the complainant, there appears to be nothing stopping them from doing so. Further, the medical report reveals blackening of the injury, which once again, at this preliminary stage appears to support the applicants version that the injury is self sustained. This aspect will have to be clarified after evidence is led at trial. In any case, the injury to the complainant has been categorized as one falling within the ambit of section 337(F)(v) which carries a potential sentence of 5 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C. An offence under section 384 P.P.C. on the other hand is a bailable one.

6. In view of the above, the applicants are admitted to pre-arrest bail subject to their furnishing solvent sureties in the amount of Rs. 50,000 each and P.R. Bonds in the like amount to the satisfaction of the Nazir of this Court.

JUDGE