

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Bail Appl. No. S- 101 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

20.03.2023

Mr. Nisar Ahmed S. Chandio, Advocate alongwith applicants.
Mr. Muhammad Hashim Leghari, Advocate for Complainant
Mr. Imran Abbasi, A.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through this Criminal Bail Application, applicants Khadim Ali @ Khadim Hussain, Muhammad Wasim, Faheem Hussain, Sheero @ Mosin, Imran Khan, Zakir Hussain, and Muhammad Saleem seek their admission on pre-arrest bail in Crime No. 166/2022 registered at Police Station Airport Nawabshah for offenses publishable under section 395, 324, 337-A(ii), L(ii), H(ii), 506/2, 504, 147, 148, 427 and 386 PPC. The bail plea raised by them before the trial Court was rejected vide order dated 28.01.2023 on the ground that they were jointly responsible for inflicting injuries to P.Ws / injured persons and all the witnesses have supported the version of the Complainant and further the sections applied are not bailable.

2. Earlier this Court vide order dated 1.2.2023 admitted the applicants to interim pre-arrest bail and today their bail application is fixed for confirmation or otherwise.

3. Brief facts of the case as per FIR are that the complainant runs a medical store at Nawabshah and the allegations against the applicants are that they used to demand bhata from them and on their refusal they became furious; therefore, on 8.12.2022 they came at their medical store, made two straight fires upon Complainant which were missed; thereafter all the accused persons beat them with lathi and iron rods; resultantly they received severe injuries and further the applicants looted an amount of Rs. 4,75,000/- from the drawer of the medical store and went away, such FIR was lodged.

4. Mr. Nisar Ahmed S. Chandio, learned counsel for applicants submits that the applicants / accused have not committed the alleged offense and the case against them is false and fabricated; that there is an unexplained delay of 22 hours in lodging FIR; that during the investigation, I.O released applicant Muhammad Saleem, due to insufficient evidence and the opinion of learned DPP and APG

also reflect that the parties had a dispute over purchasing of medicines; that on the day of the alleged incident, applicant Muhammad Saleem came at the medical store of Complainant, purchased medicines as he was going to abroad with his family, where complainant teased him and on his resistance, complainant, his servant and P.Ws severally beaten him and on his cries his relatives came and beseeched the Complainant party, but later on the complainant malafidely booked all the applicants / accused and others in the instant case. Moreover, the allegations of robbery and Bhatta have malafidely been leveled and further the said allegations have also not been proved during the investigation; that Sections 395, 324, 386 PPC have been misapplied by the police at the instance of the complainant party; that medical certificates are managed one; that offenses do not come within the ambit of prohibitory clause of Section 497 Cr.P.C. Place of the incident is thickly populated area and no any private person was associated as mashir. He lastly prayed that the case against all the applicants requires further inquiry; therefore, their bail may be confirmed. In support of his contention he relied upon the case reported as SBLR 2023 Sindh 168, SBLR 2023 Sindh 83, SBLR 2023 Sindh 363, 2021 YLR Note 144, and 2022 SCMR 1271.

5. Mr. Muhammad Hashim Leghari learned counsel for Complainant has vehemently opposed the confirmation of bail on the ground that the applicants/accused are nominated in the FIR with specific role; that the applicants/ accused have participated in the offense and were present at the place of incident according to CCTV footage. Delay in lodging of FIR has elaborately been explained by the complainant in the FIR; that there is direct evidence in the shape of eyewitnesses available with the prosecution; that all the PWs have corroborated the version of complainant in their 161 Cr. P.C, statements; Medical evidence is also in conformity with the ocular account; that no malafide or enmity is attributed towards complainant party; Section 324, 386, 395, 337-A (1), 506/2 PPC are non-bailable; therefore, the applicants/accused are not entitled to the confirmation of bail.

6. Mr. Imran Abbasi learned A.P.G. has opposed the bail application on the same analogy as put forward by learned counsel for the complainant.

7. I have heard learned counsel for the parties at some length and have perused the record with their assistance.

8. Grant of bail before arrest is an extraordinary relief, which is to be granted only in extraordinary situation to protect innocent persons against victimization through abuse of law for ulterior motives. The same relief cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of the Code of Criminal Procedure i.e. unless the

accused establishes the existence of reasonable grounds leading to a belief that he/she was not guilty of the offense alleged against him/her and that there were sufficient grounds warranting further inquiry into his/her guilt. In addition, thereto, the accused must also show that his/her arrest was being sought for an ulterior motive, particularly on the part of police; to cause irreparable humiliation to him and to disgrace and dishonor him/her.

9. For seeking bail before arrest, the accused has to establish that he/she had not done or suffered any act which would disentitle him/her to a discretionary relief in equity e.g. he / she had no past criminal record or that he / she had not been a fugitive at law.

10. Coming to the case in hand, from the record it appears that the applicants are nominated in the FIR with specific role of causing lathi blows to the Complainant party. Prima-facie, there appears no malafide on part of Complainant to book them in such injury and vandalism case. The version of the Complainant as recorded in the crime report is duly supported by the witnesses in their respective 161 Cr. P.C. statements. Medical evidence available on record prima-facie corroborate the events of the case allegedly happened at the time of alleged incident.

11. During arguments learned counsel for the Complainant has produced photographs of the incident, which prima-facie show the presence of applicants at the place of incident along with crime weapons i.e. lathis and pistol.

12. The offenses alleged against the applicants are cognizable and non-bailable. Admittedly, the applicants did not join the investigation. Prima-facie, participation of applicants in the aforesaid incident cannot be ruled out at this stage; there appears to be reasonable ground to decline the extraordinary relief for the simple reason that ingredients for grant of pre-arrest bail to applicants / accused are missing in the case.

13. Primarily, this extra-ordinary remedy is available for innocent persons to protect them from the rigors of abuse of the process initiated on behalf of interested person who intends to settle his personal score by way of lodging false case. The Hon'ble Supreme Court has held in its various pronouncements just to protect human dignity and honor from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run-of-the-mill criminal case.

14. In view of the above, applicants have failed to establish their case for confirmation of bail as portrayed by them. Accordingly, the instant pre-arrest bail

application stands dismissed and as result whereof interim pre-arrest bail already granted to the applicants / accused vide order dated 1.2.2023 is hereby **recalled** on the aforesaid reasons.

15. The observations recorded herein above are tentative in nature and shall not prejudice the case of the parties at trial.

JUDGE

Karar_Hussain /PS*