

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. B. A. No. S-393 of 2023

Mashooq Hussain  
and another

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Applicants / Accused

**V E R S U S**

The State

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Respondent

Mr. Muhammad Sulleman Dahri, Advocate for applicants/  
accused.

Mr. Nisar Ahmed Chandio, Advocate for complainant.

Mr. Nazar Muhammad Memon, A.P.G.

Date of Hearing  
& Announcement : **15.05.2023**

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Brief facts giving rise to the instant bail application are that the applicants and complainant are real brothers and a feud arose between them over water lift machine, resultantly they fought with each other in which complainant received injuries, such FIR was lodged with police station on 19.3.2023 after a delay of 18 days of the incident. The bail plea of applicant was rejected by the trial court vide order dated 14.4.2023 on the analogy that the guilt of applicants/accused does not call for further inquiry and they are not entitled to the grant of bail.

2. Mr. Muhammad Sulleman Dahri learned counsel for applicants has argued that the FIR was lodged with an unexplained delay of 18 days; that co-accused Altaf Hussain and Dilawar are on post-arrest and pre-arrest respectively; therefore, rule of consistency is applicable; that no specific role was attributed to applicants / accused and there was contradiction in the mashirnama of injuries and medicolegal certificate; that no recovery has so far been effected from applicants/accused and PWs are related to the complainant. He lastly argued that the guilt of

applicants/accused calls for further inquiry and the alleged offense does not fall within the prohibitory clause of Section 497 Cr. P.C ; therefore the bail application may be allowed.

3. In contra, counsel for complainant and learned APG vehemently opposed the bail plea of applicants on the ground that they are nominated in the FIR with specific role and the delay in lodging FIR is well explained by the complainant as he was hospitalized due to fracture in his leg. He lastly prayed for dismissal of the instant bail application. In support of his contentions learned APG relied upon the case reported in 2005 YLR 1692.

4. I have heard counsel for the parties and perused the record with their assistance.

5. A tentative assessment of record reflects that the applicant and complainant are real brothers and on the day of alleged incident the complainant received lathi blows on his left leg; lateron he was referred for medicolegal Certificate and thereafter, he reported the incident to concerned police on 19.03.2023 after a delay of 18 days. The injuries are punishable upto 5 years; besides no recovery of lathi has been effected from the applicants; mashirnama of place of incident was prepared on 20.03.2023, whereas, the alleged incident took place on 01.03.2023 and was reported on 19.03.2023. The co-accused have already been enlarged on bail by the trial court. Additionally, the applicants have also challenged the medico-legal certificate before D.G Health, Hyderabad.

6. In view of the above facts and circumstances of the case, it is yet to be determined whether the applicant caused injuries to his brother on 01.03.2023, besides the delay in lodgment of FIR is material so far as the present bail application is concerned as the brother of complainant was available to report to police on the very day. However, he took no effort to report the incident in time. The aforesaid factum requires further inquiry; therefore, this bail application is allowed, the applicants are enlarged on post-arrest bail in FIR No. 09 of 2023 registered at PS Darya Khan Rind @ Maqsoodo Rind for offenses punishable under Section 337-F (vi)- F (i)- A(i)- L(ii), 504 & 34 PPC subject to furnishing solvent surety in the sum of Rs. 100,000/- (one lac only) each with PR bond in the like amount to the satisfaction of trial court.

7. The observations recorded hereinabove are tentative in nature and shall not prejudice the right of either party at trial.

8. These are the reasons for my short order dated 15.05.2023 whereby the bail application of applicants has been allowed.

JUDGE

Karar-Hussain/PS\*