

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-163 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>27.03.2023</u>	For orders on office objection. For hearing of main case.
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Mr. Habib Ali Leghari, advocate for the applicants along with applicants, who are present on interim pre-arrest bail.

Mr. Sahib Khan Panhwar, advocate for complainant along with complainant.

Mr. Imran Ahmed Abbasi, A.P.G. Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Sajjan Khan alias Sajjan, Sadam Hussain alias Sadam and Muharam Khan alias Muharam seek pre-arrest bail in Crime No.47/2022, registered at Police Station Phulji Station, District Dadu for the offence under sections 324, 452, 147, 148, 149, 114, 504, 337-D, 337-F (ii) PPC. Earlier the bail plea of the applicants/accused was declined by the learned Additional Sessions Judge-Ili, Dadu vide order dated 14.02.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants has mainly argued that the applicants/accused are innocent and have falsely been implicated in this case; that there is delay of nine days in lodgment of FIR and no plausible explanation has been furnished. Learned counsel has invited attention of the Court towards page-113 of the Court file, i.e. FIR of crime No.16/2022 registered at PS Fulji Station lodged by one Muhammad Younis, submits that in the said FIR Abdul Jabbar was an accused, who is the husband of complainant of instant FIR, therefore, due to such enmity applicants/accused have been involved in the instant case. He further contended that the Investigating Officer failed to collect the blub from the place of incident which is the source of identification. He further contended that case has been challaned and the applicants/accused are attending the court and they are no more required for further investigation. He pleaded *mala fide* on the part of the police. In support of his contentions, learned counsel has relied upon the

cases reported in 2006 MLD 343, 2009 PLD Lahore 312, 2011 YLR 2657, 2012 YLR 2566, 2012 SCMR 887, 2013 YLR 2746, 2015 YLR 2595, 2018 YLR Note 73, 2021 SCMR 130 and 2023 SCMR 264 and prayed for confirmation of interim pre-arrest bail of the applicants/accused.

4. On the other hand, learned counsel for the complainant and learned A.P.G. Sindh have vehemently opposed the bail application. Learned counsel for the complainant contended that they have no concern with the alleged FIR No.16/2022 registered at PS Fulji Station and present complainant has no concern with the same.

5. Heard and perused the record.

6. Perusal of record reflects that all the accused have been nominated in the FIR with specific role that the applicants/accused armed with pistols and Danda along with others trespassed the house of complainant and on the instigation of co-accused Khadim Hussain, the applicants/accused made straight fire shots upon the husband of complainant namely Abdul Jabbar, which hit him on his left side of abdomen; applicant/accused Muharam inflicted danda blow upon the back of injured; accused Saddam Hussain also made straight fire shot of his pistol, which also hit on left joint-elbow of Abdul Jabbar. The ocular version is fully find support of the medical evidence. So far delay in lodgment of the FIR is concerned, it is fully explained in the FIR that the injured was firstly carried at police station Fulji for obtaining referring letter; thereafter, he was carried at Civil Hospital Dadu wherefrom he was referred to Sehwan Hospital and then at Lal Bati Civil Hospital Hyderabad. In this regard, the Hon'ble Supreme Court has been pleased to observe in the case of 'GHULAM QADIR v. The STATE' [2022 SCMR 750], the relevant observations are reproduced as under:-

“3. Contents of the First Information Report supported by the statements of the witnesses and findings recorded by the Medical Officer run counter to the hypothesis of denial. Though the formal First Information Report was recorded on 17.8.2021, however, the injured with extensive injuries were medically examined under police dockets on 13.8.2021; according to the provisional medico legal certificates, they had reached hospital on 12.8.2021 at 6:00 p.m. just half an hour after the incident and, thus, delay in formal registration of the case, a phenomena hardly unusual, does not raise eyebrows. Even otherwise, in the absence of any apparent mala fide on part of the complainant or the local police, the petitioner cannot claim extraordinary/equitable concession of pre-arrest bail in a criminal case wherein no less than three

persons endured multiple injuries, one being an incised wound on the back of neck with exposed bone. Arguments addressed by the learned counsel, being part of post arrest agenda, cannot be attended at pre-arrest bail stage, certainly not substitute for post arrest bail. The High Court as well as the Court of Sessions, on the assessment of above referred to material, rightly declined judicial protection to the petitioner. Petition fails. Leave declined.”

7. Apparently, the husband of complainant received multiple injuries at the hands of applicants; therefore, no *mala fide* appears in the instant case. Prosecution has, *prima facie*, furnished sufficient material to connect the applicants with the commission of offence, therefore, this is a case where bail cannot be granted to the applicants. Since the specific role has been assigned to each of the applicants/accused and they have caused serious injuries to the injured, hence, they do not deserve for concession of bail. Accordingly, instant criminal bail application is **dismissed**.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE