

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-390 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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12.06.2023

Mr. Nihal Khan Lashari advocate for applicants along with applicants on ad-interim pre-arrest bail.

Mr. Ghulamullah Chang advocate for complainant along with complainant and injured Niaz Hussain.

Mr. Imran Ali Abbasi, Assistant Prosecutor General.

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MUHAMMAD IQBAL KALHORO, J.- Complainant who is police constable has alleged in FIR dated 01.03.2023 that he along with his brother Niaz Hussain and minor nephew Hadi Bux aged about 08 years set out for Tando Allahyar on a motorcycle and when at about 0800 hours reached link road Allah Warrayo Mirjat, they saw applicants duly armed with weapons coming. Initially, applicant Arshad from his pistol made two fires at complainant party to stop them which hit the motorcycle. After which all the accused caused injuries to complainant and his brother Niaz Hussain, numbered 09 to each victim.

2. Learned defense counsel has argued that there is old enmity between the parties; earlier also a case Crime No.59/2022 was registered by the complainant in which applicants have been released. The complainant is misusing his position of police constable and at same Police Station he has been registering cases against the applicants; mother of complainant had filed an application u/s 491 CrPC against applicants and in the memo of injuries only 04 injuries are shown whereas in the medical certificate 09 injuries have been declared; the applicants are innocent and the medical certificate has been challenged by the applicants party.

3. On the other hand, learned counsel for complainant has opposed bail citing specific role of the applicants in FIR. His arguments have been supported by learned Assistant PG.

4. I have considered submissions of parties and perused material available on record. The applicants have applied for pre-arrest bail which is extraordinary relief and is meant only to save an accused who on the face of record seems to have been implicated falsely out of malafide and ulterior motives. In this case, the applicants have been named by complainant with specific role of causing injuries conjointly to him and his brother. These injuries, 09 in number to each victim, have been verified by the Medico Legal Officer. The difference of injuries in memo of injuries and medical certificate highlighted in defense is of no consequence at bail stage. Moreso, police official who has prepared this memo is not an expert to find out exact number and locale of injuries like a medical officer. Preference insofar as to the nature and locale and number of injuries are has to be given to the medical certificate and not to memo of injury for at least making a decision in bail matters by the court. Enmity is a double edged weapon which cuts both the ways, its presence will not be considered a favorable circumstance to applicants. The applicants in view of specific role of causing injuries to the victims are not entitled to the concession of pre-arrest bail.

5. Accordingly, this application is dismissed and applicants' ad-interim pre-arrest bail granted to them vide order dated 20.04.2023 is hereby recalled.

6. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE

Ali Haider