

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. B.A. No. S- 408 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

12.06.2023

For orders on office objections
For hearing of main case

Mr. Shabeer Hussain Memon, Advocate for applicant
Mr. Mushtaque Ahmed Rind, Advocate for Complainant
Mr. Siraj Ahmed Bijarani, A.P.G.

ORDER

MUHAMMAD SALEEM JESSAR, J.- Through instant application, applicants Aijaz Ali @ Aijaz and Muhammad Ameen both by caste Jamali seek their admission on post-arrest bail in Crime No. 25 of 2023 of police station Johi district Dadu under Section 459, 337-F(iii), L(ii) PPC.

2. The applicants were arrested by the police on 13.2.2023 and after completion of investigation the case has been challaned which is now pending for trial before the court of Additional Sessions Judge-II Dadu vide Sessions Case No. 210 of 2023 (re- The State v. Aijaz Jamali and others). The applicants filed their bail plea before the trial court, which vide order dated 18.4.2023 has been declined, hence instant bail application has been maintained.

3. Since the facts of the prosecution case are already mentioned in the FIR; therefore, there is no need to reproduce the same.

4. Learned counsel submits that the FIR is delayed for about twenty (20) hours whereas no theft was committed or it has been specified by the Complainant that certain particular items were supposed to be stolen away by the accused; therefore, application of Section 459 PPC is yet to be determined by the trial court after recording evidence. He further submits that the injuries allegedly sustained by injured P.W Sahib Khan are on his non vital part of the body and both injuries carries maximum punishment upto three (03)

years; therefore, does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. He further submits that on the fateful day viz. 12.2.2023 at 1030 hours (morning) the Complainant party appeared at police station, obtained letter for medical treatment of the injured hence the police concerned had kept entry No. 01 dated 12.2.2023 which reveals that due to scuffle with accused Aijaz and others the injured had sustained injury and no particular role or name of any of the accused was given by the informant in the entry. He further submits that infact the son of Complainant namely Arshad as well as applicant Ameen had gone to UAE where they had fought with each other and on return to homeland instant story has been cooked up. He further submits that in view of above factual position, the case against applicants requires further inquiry and prays for their release on bail. In support of his contentions he places reliance upon the cases of Shammon alias Samandar v. The State (2007 MLD 294) and Jamsher Mazari v. The State (2009 YLR 387).

5. Mr. Siraj Ahmed Bijarani, learned A.P.G. appearing for the State vehemently opposes the bail application on the ground that accused are nominated in the FIR with specific role of causing pistol butt blows to injured while lurking house trespass and the offence with which the applicants have been charged carries maximum punishment; therefore, they are not entitled for bail.

6. Mr. Mushtaq Ahmed Rind, advocate for Complainant also opposes the bail application and submits that the applicants while making lurking house trespass at night had caused injuries to the inmates; therefore, they are not entitled for bail. He further submits that the offence with which the applicants are charged carries ten (10) years punishment, hence the bail application is liable to be dismissed. He; however, could not controvert the fact that nothing was stolen away by the accused and the injuries allegedly sustained by the injured carries maximum punishment upto three years. He further places his reliance upon the case of Aman alias Amu alias Amanullah and another v. The State (2013 P.Cr.L.J 1778) and Noor Muhammad Mahar v. The State (2003 P.Cr.L.J 344).

7. Admittedly the applicants are nominated in the FIR; however, the time of alleged incident as shown in the FIR is of midnight and

source of identification as shown is electric bulbs. Though the applicants were armed with pistols yet instead of using the same properly they allegedly had caused butt blows to injured Sahib Khan at palm of his right hand besides the injuries allegedly sustained by him have been declared by the medicolegal officer to be punishable under Section 337-F(iii) and 337-L(ii) PPC which carries maximum punishment upto three years. As far as application of Section 459 PPC is concerned nothing has been shown to have been stolen away by the accused nor anything has been brought on record that the accused at the time of alleged occurrence had attempted to pick a particular thing or cattle from the house to believe that they allegedly had entered into the house at night aims to commit theft. In absence of such element the prosecution has to prove its charge against the applicants in terms of Section 459 PPC after recording evidence of its witnesses and the trial court has to determine the accusation against them. Lodgment of an entry by the police between the time of incident as well as registration of FIR by same party cannot be brushed aside. Both the parties are known to each other and as per claim of the accused they had gone to UAE where they allegedly had quarrel with each other was the moot point which germinated instant case. The main thing in this case is that nothing has been shown to have been stolen away and the injuries allegedly sustained by the injured are on non vital part of his body which too not exceeding the limits of prohibitory clause of Section 497 Cr.P.C., coupled with the fact that no recovery of crime weapon has been effected from their possession. Hence I am of the view that the applicants have make out a good prima facie case for their release on bail within meaning of subsection 2 of Section 497 Cr.P.C. As far as the law relied upon by the Complainant's counsel is concerned, it has no relevancy with the facts and circumstances of present case, hence are distinguishable from the facts and circumstances of instant case.

8. Consequently, instant bail application is hereby allowed; the applicants shall be released on bail subject to furnishing their solvent surety in the sum of Rs.100,000/- (One Lac) each and PR bond in the like amount to the satisfaction of learned trial court.

JUDGE