

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 870 of 2023

(Khalid Hussain and another Vs. The State)

1. For Orders on office objection.
2. For Orders on MA No. 7357/2023 (Ex./A)
3. For hearing of Bail Application

29-01-2024.

Mr. Mehfooz Ahmed Awan advocate for the applicants.

Mr. Imtiaz Ali Abbasi, advocate for the complainant.

Mr. Shafi Muhammad Mahar, DPG PG for the State.

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1. Over ruled.
2. Granted subject to all just and legal exceptions.
3. It is alleged that the applicants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object caused hatchet and lathis injuries to complainant Azad, PWs Qurban, Nadir Ali and Shafi Muhammad, who died of such injuries, for that the present case was registered.
4. The applicants on having been refused post-arrest bail by learned Vth Additional Sessions Judge, Sukkur; have sought for the same from this Court by way of instant Crl. Bail Application under section 497 Cr.P.C.
5. It is contended by learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant party only to satisfy with them its dispute over matrimonial affairs; the FIR of the incident has been lodged with delay of about one day; there is conflict between ocular and medical evidence and there is counter version of the incident. By contending so, he sought for release of the applicants on bail on point of further inquiry. In support of his contention, he has relied upon the case of *Muhammad Umar Waqas Barkat Ali Vs. The State and another (2023 SCMR 330)*

6. Learned DPG for the State and learned counsel for the complainant have sought for dismissal of the instant bail application by contending that the applicants are fully implicated in commission of incident with specific role of causing hatchet injuries to the deceased; the counter version has been created and deeper appreciation of the facts and circumstances is not permissible at bail stage. In support of their contention they relied upon the case of *Mumtaz Vs. The State (2012 SCMR 556)*.

7. Heard arguments and perused the record.

8. The applicants are named in the FIR with allegation that they with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object went over to the complainant party and caused hatchet and lathi injuries to the complainant, PWs Qurban, Nadir Ali and the deceased. The specific role of causing hatchet injuries to the deceased is attributed to the applicants. In that situation it would be premature to say that the applicants being innocent have been involved in this case falsely by the complainant party. The delay in lodgment of the FIR by one day is well explained in FIR itself, same even otherwise could not be resolved at this stage by this Court. Whether the hatchets injuries were caused to the deceased with its sharp side or back side? it requires determination at trial. It could hardly be treated as a conflict between medical and ocular evidence; such fact even otherwise could not be appreciated by this Court at this stage. The FIR of the counter version has been lodged with delay of about four months, which prima-facie suggests that the counter version of the incident was created. The enmity between the parties cuts both the ways. There appear reasonable grounds to believe that the applicants are guilty of the offence, with which they are charged and no case for their release on bail is made out.

9. The case law, which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances, in that case there was inordinate delay of about six days in lodgment of the FIR. In

that instant case FIR of the incident is lodged with delay of one day and it well explained.

10. In view of above, the instant bail application fails and is dismissed accordingly.

Judge

Nasim/P.A