

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-798 of 2023

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection  
For hearing of main case

**21.08.2023**

Mr. Muhammad Nawaz B. Jamali advocate a/w applicants.  
Ms. Rameshan Oad, A.P.G. for the State.

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**ZULFIQAR ALI SANGI, J** :- Through this bail application, applicants Allah Bachayo @ Bachayo, Ghulam Hussain, Muhammad Amin, Asghar Ali and Muhammad Ismail, all by caste Jamali seek pre-arrest bail in FIR No.60 of 2023, registered at PS Nindo for offences under sections 337-F(vi), 337-F(i), 337-A(i),147, 148,149, 114 and 504, PPC. After their bail application was declined by learned Sessions Judge, Badin vide order dated 18.07.2023.

2. Since the facts of the prosecution case are already mentioned in F.I.R as well impugned order, therefore, there is no need to reproduce the same.

3. It is, *inter alia*, contended by learned counsel for applicants that applicants being innocent have been falsely implicated in this case by the complainant with ulterior motives of brotherly and property affairs; that prior to this FIR, complainant filed application under section 22-A& B, Cr.P.C, in which, the story is totally different and the allegation against Ghulam Hussain that he caused lathi blows to complainant on his arm while the other accused gave kicks and fists blows, the story in FIR has malafidely been improved with specific allegations against each other and have shown the other injury which are not specified in application u/s 22-A&B Cr.P.C, hence complainant has changed the specification of injuries and have also given different version of other injuries against applicant/accused Ghulam Hussain; that FIR is delayed for about 27 days, which has not been properly explained by the complainant; that all PWs are close related to the complainant; that all male members of applicants family have been implicated in this

case by the complainant party with malafide intention; that complainant lodged NC at PS vide entry No.21 and at the time of obtaining letter for treatment, he has shown three persons as assaulter but in FIR, complainant has shown five persons, in which names of Allah Bachayo and Ismail have been included by showing their role of instigation, which is clear malafide on the part of complainant as well as police during registration of FIR, which requires the case of further inquiry. He next contends that the offences with which applicants are charged does not fall within prohibitory clause of section 497, Cr.P.C and they are on interim pre-arrest bail; they are regularly attending the trial Court.

4. At the outset, learned A.P.G raised no objection for confirmation of interim bail of applicants Allah Bachayo and Ismail whose role are having instigation in FIR, whereas she opposed the confirmation of interim bail of applicants Ghulam Hussain, Muhammad Amin and Asghar Ali by stating that they are nominated in FIR with specific role of causing six injuries to the complainant which have been medically opined by the doctor to be injury No.1 Shajjah-i-Khafifa, injury No.4 Ghyr Jaifah-Munaqillah whereas injuries No.2,3,5 and 6 Ghyr Jaifah Damya which are notailable in nature, as such, they are not entitled for confirmation of interim bail.

5. Heard and perused the material available on record.

6. From the perusal of F.I.R, it reflects that there is enmity already existed between the parties and the F.I.R. is lodged with delay of about 27 days, but no any plausible explanation has been furnished by the complainant. Furthermore, the role assigned by the applicants Ghulam Hussain, Muhammad Amin and Asghar that they cause injuries to the complainant on different parts of his body. It is yet to be seen whether complainant received injuries on his left arm, right arm or he not received injuries as stated, after the evidence recorded by the trial Court. The complainant has shown that applicant Asghar was armed with DBBL gun, but it is imaginable that a person who was having DBBL gun in company of co-accused did not fire from his gun and simply he caused butt blow to the complainant. It is observed that there are material contradictions between the medical certificate and mashirnama of injuries of the complainant prepared by the police on

15.06.2023. The contradictions between the FIR and the application under section 22-A&B, Cr.P.C are also noticed. Learned counsel for the applicants pleaded malafide on the part of the complainant that after arranging the medical certificate he has lodged false F.I.R. against them which tentatively visible from the facts and circumstances. Further, the injury attributed to the applicant Ghulam Hussain falls under section 337-F(vi), PPC and its punishment provided for seven years, which does not come within the prohibitory clause of section 497, Cr.P.C and grant of bail is a rule and refusal is an exception and no exception has been pointed out by learned A.P.G during the arguments of this bail application. The challan has been submitted before the competent Court of law and the applicants are attending the trial Court regularly, as such, they are no more required by the police for further investigation.

7. In view of above reasons, I am of the tentative view that the applicants have made out a case for confirmation of interim pre-arrest bail of the applicants, resultantly, instant bail application is allowed and interim pre-arrest bail already granted to the applicants by this Court vide order dated 31.07.2023 is hereby confirmed on the same terms and conditions.

8. The applicants, who are present on interim bail have been confirmed as above, are directed to attend the learned Trial Court regularly if they fail to appear, the Trial Court would be at liberty to take action against them in accordance with law.

9. Needless to mention here that the observations made hereinabove are tentative in nature and will not prejudice the case of either party at the time of trial.

10. This bail application stands disposed of in the above terms.

JUDGE