

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail Application No.S-348 of 2023***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on O/objection at flag-A.*
2. *For hearing of bail application.*

Date of hearing **09.10.2023**

Mr. Ghulam Ali Bozdar, Advocate for applicants

Mr. Rahib Islam Nabi Malano, Advocate for complainant.

Syed Sardar Ali Shah, Addl.P.G for State.

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**ORDER**

**10-10-2023**

***KHADIM HUSSAIN SOOMRO, J.*** Through instant bail application, applicants/accused Raza Muhammad son of Allah Jurio and Zahid son of Arz Muhammad seek their admission on pre-arrest bail in Crime No.27/2023 registered at Police Station, Jarwar, for an offence punishable under Sections 324, 452, 337A(i), 337-F(i), 337H(ii), 147, 148, 149, 504, 506/2 PPC. The applicants preferred anticipatory bail application No.117/2023 before the Court of Additional Sessions, Judge-I, Mirpur Mathelo, and after hearing the parties, the learned court turned down their request; hence, the instant bail application.

2. Facts of the prosecution case, in brief, are that the complainant Waqar Ahmed Lashari lodged FIR on 16.04.2023 at 2230 hours at Police Station Jawar stating that a dispute arose between the complainant with Abdul Razzak over the land property due to which the accused got annoyed and threatened that they would teach them (the complainant party) a lesson. On 15.04.2023 he, along with his father Rasheed Ahmed and uncle Muneer Ahmed as well as other inmates were present in their house, when at about 0800 hours, they saw and identified accused Arz Muhammad son of Allah Jurio empty handed, Abdul Razzak son of Jaro with hatchet, Abbas son of Jaro with Iron rod, Raza Muhammad son of Allah Jurio with hatchet, Zahid son of Arz Muhammad with Iron rod,

Wahid Ali son of Arz Muhammad with lathi, Shahid son of Arz Muhammad with guns, Shah Mehmood son of Allah Jurio, Ashique son of Jaro with pistol all by caste Lashari forcibly entered into the house of the complainant and on arriving, the accused Arz Muhammad used abusive language and said why they had not resolved the matter of land property with them and now they would not spare them, to which complainant replied to be gentleman, where upon accused Arz Muhammad instigated others and on his instigation accused Abdul Razzak caused straight hatchet blows to the father of complainant Rasheed Ahmed which hit on his head, while accused Abbas caused Iron rod blow to him on right side of head. Accused Raza Muhammad caused hatched below to Rasheed Ahmed on right side of head whereas accused Zahid caused an Iron rode blow on the elbow of his left arm and finger of the right hand. The accused Shah Mehmood, caused a lathi blow to the complainant on his lip. They raised cries and fell down, and the accused then caused kicks and fist blows to the complainant party. Thereafter, all the accused, while making aerial firing, made their escape good. The complainant then obtained a letter and went to Taluka Hospital, Mirpur Mathelo; after treatment, the complainant received MLCs and appeared at Police Station and lodged FIR.

3. Learned Counsel for the applicants argued that the applicants have falsely been implicated by the complainant with malafide intention and ulterior motives; there is a delay of one day in lodging the FIR, which has not been properly explained by the complainant; the injuries received by the complainant party do not fall within the ambit of prohibitory clause of Section 497 Cr. P.C; this is a counter-case of FIR bearing Crime No.28/2023 lodged by applicant No.1 against the complainant party in which bail has been granted to accused persons by the learned Additional Sessions Judge, Mirpur Mathelo. He lastly contended that the deep scrutiny of evidence is not permissible, nor was it the requirement of law at the bail stage. By contending so, he prayed for confirmation of bail.

4. on the other hand, Syed Sardar Ali Shah, learned Additional Prosecutor General assisted by Mr. Rahib Islam Nabi Malano, Counsel for the complainant, vehemently opposed the grant of bail and supported the impugned order passed by learned Additional Sessions Judge,

Mirpur Mathelo; that applicants have been attributed with specific roles of causing injuries to injured Rasheed Ahmed which he received on his head as well as the elbow of his left arm and the Medical Officer opined the injury No.(i), (ii) (iii) (iv) & (v) as Ghyr Jaifah Munaqillah, Ghyr Jaifah Damighah, Shuja-i-Khafiah and Shujjah-i-Hashimah caused by hard and blunt substance/Sharp cutting weapon which provided punishment upto Fourteen years. In support of his contentions, he placed reliance upon case of *Katbar and another v. The State (1998 P.Cr.LJ 1438)*, and *Khair Muhammad alias Khiroo v. The State (2003 MLD 1789)*; and prayed for dismissing the bail application.

5. I have considered the arguments advanced by learned Counsels for parties and have gone through the record carefully.

6. Perusal of the record reflects that names of present applicants appear in the FIR with the specific roles of causing a hatchet and Iron blow upon the father of complainant Rasheed Ahmed, which he received on his head, elbow and fell down. They also shared a common intention with other co-accused and participated in the commission of the offence. The case of the complainant is fully supported by the Pws in their 161 statements coupled with medical evidence. As per the final Medical Certificate, the Medical Officer has opined that “*Fracture seen at Rt. Temporal bone along the coronal suture. Displaced fractures seen at mid shafts of Lt. Radius & ulna, Fracture seen at proximal phalanx of Lt. Index Finger. Post surgical changes seen at Lt. Radius & Ulna*”. The injury No.(i) declared as Ghyr Jaifah Munaqilah, Injury (ii) as Ghyr Jaifah Damighah, Injuries No. (iii)&(v) Shiujjah-e-Khafifah and injury No.(iv) was declared as Shajjah-i-Hashimah “*caused by sharp cutting weapon*” which provided punishment up to 10 years hence, the ingredients of **Section 324 PPC** are fully attracted in the case in hand. It is pertinent to mention here that this is a pre-arrest bail application, and the applicants/accused have to show the malafide on the part of the complainant, but they have failed to do so.

7. In the case of *Ahtisham Ali V/S The State 2023 S C M R 975* the Supreme Court has observed that the grant of pre-arrest bail is an extraordinary relief which may be granted in exceptional cases or situations to protect the liberty of innocent persons in cases lodged with

mala fide intention to harass the person with ulterior motives. When the applicant accused is seeking pre-arrest bail, they must fulfil the specific requirements outlined in section 497 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") in order to satisfy the Court. The relevant paragraph is reproduced as under-

*“It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under section 497 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of Rana Abdul Khaliq v. The State and others (2019 SCMR 1129), this Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427), this Court has discussed the framework and guidelines for granting bail before arrest under section 498, Cr.P.C. by the High Courts*

*and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm.”*

8 . The case of the present applicant accused does not fall into either category, as discussed in the aforementioned case law. The offence with which the applicants/accused are charged falls within the restrictive clause of Section 497 Cr.P.C.; therefore, I am of the considered view that applicants *Raza Muhammad and Zahid* have failed to make out a case for confirmation of bail. Accordingly, the bail application is dismissed. The ad-interim pre-arrest bail already granted to them vide order dated 29.05.2023 is hereby recalled, and surety is discharged. Let a copy of this order be sent to the learned trial Court for information.

9. These are the reasons of my short order dated 09.10.2023.

10. Needless to say, the observations made here-in-above are tentative in nature and only for the purpose of this bail application. Nothing herein shall affect the determination of the guilt or otherwise at the trial or influence the Trial Court in reaching its decision on the merits of the case.

Bail application stands disposed of in the above terms.

**J U D G E**

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