

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1958 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicants	: 1. Lal Muhammad son of Abdul Ghafoor 2. Yar Muhammad son of Abdul Ghafoor 3. Waliullah son of Abdul Ghafoor 4. Muhammad Sardar son of Abdul Ghafoor 5. Ashraf son of Lal Muhammad (present on bail) Through Mr. Arshad Hussain Bhutta, Adv.
The State	: Through Mr. Khadim Hussain, Addl. Prosecutor General, Sindh.
Complainant	: Syed Muhammad Through Mr. Riaz Ahmed Bhatti, Advocate
Date of hearing	: 10.10.2024
Date of order	: 10.10.2024

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants Lal Muhammad, Yar Muhammad, Waliullah, Muhammad Sardar and Ashraf seek their admission to pre-arrest bail in Crime No.899 of 2024 registered with Police Station S.S.H.I.A, Karachi, for the offences punishable to Sections 395 & 337-F(i) PPC. The case has been challaned which is now pending before the Court of Judicial Magistrate concerned, for preliminary proceedings in terms of dicta laid down by Hon'ble Supreme Court of Pakistan in case of MUHAMMAD RAMZAN Versus RAHIB and others (PLD 2010 SC 585). The applicants preferred their anticipatory bail before the Court of Sessions wherefrom it was assigned to Addl. Sessions Judge-VI, Malir Karachi vide Criminal Bail Application No.3780 of 2024 (re-Lal Muhammad and others Versus The State), who after hearing the parties, has turned down their request through order dated 29.08.2024; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. At the very outset, learned counsel for the applicants submits that the incident is said to have taken place on 21.07.2024; whereas, report thereof was lodged on 06.08.2024 i.e. with delay of about fifteen days, for which no plausible explanation has been furnished by the prosecution. Learned counsel next submits that police have deleted section 395 PPC and remaining sections are bailable. In support of his contention, he places on record a copy of challan duly accepted by the Judicial Magistrate with his endorsement dated 08.10.2024, taken on record. He further submits that accused are nephews of complainant, therefore, due to their matrimonial dispute, instant case has been cooked up; hence, case against them requires further inquiry. He, therefore, prays for grant of bail. In support of his contention, learned counsel places reliance upon the cases of (i) *MUHAMMAD MANSHA Versus THE STATE and another* (2011 YLR 2115), (ii) *SULTAN and 6 others Versus The STATE* (2018 YLR 204), (iii) *FAYYAZ ALI and 9 others Versus The STATE* (2024 YLR 1562), (iii) *ISHAQ ALI and another Versus The STATE* (2019 P.Cr.L.J 55), and (iv) *HAKIMUDDIN SOOMRO and 3 others Versus The STATE* (2022 YLR Note 81).

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, instead of giving his own opinion, submits that he would follow the arguments advanced by learned counsel for the complainant.

5. Learned counsel for the complainant opposes the bail application on the ground that though challan has been submitted yet the Magistrate concerned has not taken cognizance of the offence; besides, accused are nominated in the FIR and the PWs who have been examined during investigation under Section 161 Cr.P.C, have fully supported the case of prosecution by implicating accused. He, therefore, submits that the offence with which accused stand charged, is a heinous one; hence, they are not entitled for the bail.

6. **Heard arguments and perused record.** Per FIR, all accused have been assigned an allegation of general role except accused Ashraf and

Muhammad Sardar, who allegedly caused a sharp iron and dragger blow to his son Askar Khan. There are four injuries sustained by two PWs and all four injuries have not been specified against accused Ashraf and Muhammad Sardar; besides, all injuries have been declared by the MLO to be Shajjah-i-Damighah and Shajjah-i-Ghayr Jaifah Badihah punishable to Sections 337-F(i) & 337-F(ii) PPC, which carry maximum punishment of three years and are bailable. Moreover, the injuries allegedly sustained by the injured are on non-vital part of the body and have not been declared by the MLO to be detrimental to their lives. The main section viz. 395 PPC has been deleted by the I.O. The contention raised by learned counsel for the complainant that Magistrate still has not taken cognizance of the report submitted by the IO in terms of Section 173 Cr.PC, therefore, section 395 PPC may be deemed to be operative, which carries maximum punishment up to 10 years, has no force as the copy of challan produced by counsel for the applicants today in Court, reveals it was accepted by the Presiding Officer of the Court with his signature as well as stamp and in case the Magistrate may defer with the opinion of I.O even then evidence of the I.O is very much essential. Since, the prosecution itself has dented its own case by deleting section 395 PPC from the charge and thus case of prosecution has become a case of two versions; hence, which version out of two, is correct, is yet to be determined by the trial Court after recording evidence of prosecution witnesses. As is evident in the FIR, incident had occurred on 21.07.2024; whereas, report thereof was lodged on 06.08.2024 i.e. with a delay of about fifteen days for which no plausible explanation has been furnished by the prosecution, for such an inordinate delay. The delay so occasioned by the police in discharging their duties casts serious doubts into the veracity of the prosecution evidence. All above factors create reasonable suspicion which entitles the accused to the concession of pre-arrest bail. In view of what has been discussed hereinabove, I am of the opinion that a case of anticipatory bail is made out.

7. In the circumstances and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in cases of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)* as well as *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*, case against applicants requires further inquiry within meaning of

subsection (2) to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicants **(i) Lal Muhammad, (ii) Yar Muhammad, (iii) Waliullah, (iv) Muhammad Sardar, all four sons of Abdul Ghafoor and (v) Ashraf son of Lal Muhammad** on 30.08.2024 is hereby confirmed on same terms and conditions.

8. Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC.

9. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A