

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Bail Application No.S-215 of 2024
(*Inayatullah & others Vs. The State*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 25-09-2024

Mr. Shoukat Ali Rahimoon, advocate a/w applicants (on bail).
Mr. Ayaz Ali Jokhio, advocate a/w complainant Ali Muhammad
Mr. Dhani Bakhsh Mari, Assistant P.G

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ORDER

Adnan-ul-Kareem Memon, J. The applicants/ accused Inayatullah, Qazi, Nasarullah and Muhammad Soomar have filed instant bail application under section 498 of the Criminal Procedure Code (Cr.P.C.), seeking their admission to pre-arrest bail. This bail application is related to FIR No.19/2024 registered under Section 324, 506(2), 504, 341, 114, 34 P.P.C of Police Station Bodar Farm, District Umerkot.

2. Previously, the applicants' bail plea was rejected by the learned trial Court on 29-08-2024 in Criminal Bail Application No.546/2024. The trial court's decision was based on the premise that the applicants were actively nominated for acting in furtherance of their common intention and attacking upon victim party, resulting in firearm injuries to victim Abdul Sami. The court also determined that such accusations were/are corroborated by ocular and medical evidence and that FIR was lodged promptly. The court further stated that previous enmity was/is a double-edged weapon and plea of false implication amounts to deeper appreciation, which was/is unwarranted at the bail stage.

3. Learned counsel for the applicant submits that the applicants were implicated by the complainant in the case due to a matrimonial dispute over the free-will marriage of Mst. Iqra d/o applicant Muhammad Soomar; that there are general allegations against applicants Qazi, Nasarullah, and Muhammad Soomar; that injuries sustained to injured on his non-vital part; therefore, section 324 PPC does not attract to the role of applicant Inayatullah, while the rest of sections do not fall within

prohibitory clause of section 497 Cr.P.C; that there is no hard and fast rule that merits of the case cannot be touched upon while deciding bail under section 497 Cr.P.C. In support of his contentions, he relied upon the cases of Jamaluddin and another Vs. The State [2023 SCMR 1243] & Ghulam Rasool Vs. The State [2022 MLD 1088]. He prayed for confirmation of interim pre-arrest bail to the applicants/accused.

4. The learned APG assisted by learned counsel for the complainant argued that the applicants are specifically nominated in the promptly lodged FIR for launching assault upon the victim Samiullah in furtherance of their common intention and are vicariously liable for causing firearm injury to him; that it is a clear case of fire-arm injury, therefore, no question of fabrication arise at all; that no ill will or malice is apparent on the part of the prosecution to have falsely implicated the applicants; that section 324, PPC, is well applied, which contains prohibition under section 497(1) Cr.P.C. He relied upon cases of Bakhti Rahman Vs. The State & another [2023 SCMR 1068] & Attaullah Vs. The State [2024 P.Cr.L.J 940].

5. I have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. Bail before arrest is an extraordinary relief granted only in exceptional cases to protect innocent people from abuse of the law. It is not a substitute for post-arrest bail. The accused must show that their arrest is being sought for ulterior motives by the police to cause them irreparable harm. They must also establish that they have not done anything that would disqualify them from receiving this discretionary relief. The aforesaid ingredients of principles are missing in the present case as the facts obtained in the present case, are tentatively assessed which prima facie show that the alleged offense occurred on June 25, 2024, and was reported the same day. Police recorded witness statements, visited the scene, prepared injury reports, and collected medical evidence as well as empty shells of the crime weapon from the place of the incident. Charges of assault, criminal intimidation, and wrongful restraint were filed against them. A medical examination confirmed injuries consistent with charges of Section 337-F (III) of the Pakistan Penal Code as *Ghyr-i-Jaifah Mutalahimah*.

7. The contentions of the learned counsel for the applicants that the injured received a firearm injury on a non-vital part of his body and the fire was not repeated are without merit. The case of the applicants, prima facie falls within the mischief of section 324 of the Pakistan Penal Code, 1860, and cannot be admitted on pre-arrest bail at this stage without recording the evidence of the injured, in the absence of any consideration within the purview of subsection (2) of section 497 of the Code *ibid*. The definition of murderous assault in the section *ibid* does not distinguish between vital or non-vital parts of the human body. Once the trigger is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Sheqab Muhammad v. The State and others* (2020 SCMR 1486).

8. For the aforesaid reasons, this pre-arrest bail application is dismissed, and the interim pre-arrest bail granted to the applicants vide order dated: 03.09.2024 is hereby re-called. The trial Court is directed to examine the injured in one month and if the charge is not framed, the same shall be framed on the date so fixed by the trial Court. The directions of this Court shall not be ignored at all, which has serious repercussions.

9. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at trial.

10. These are the reasons for my short order dated 25-09-2024, whereby the pre-arrest bail to the applicants has been declined.

JUDGE