

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1stCriminal Bail No.S-425 of 2024

Applicant: Umed Ali son of Bakht Ali Mazari
Through Mr. Ayaz Ahmed Faras, Advocate.

Complainant: Deedar Ali son of Muhammad Saleh Mazari

The State: Through Mr. Ali Anwar Kandhro, Additional Prosecutor
General, Sindh.

Date of Hearing: 21.11.2024

Date of Order: 21.11.2024

ORDER

ARBAB ALI HAKRO, J.:- Through instant Criminal Bail Application, the applicant seeks Bail Before Arrest in the case emanating from F.I.R No.115/2024, registered at Police Station Kashmore under Sections 324, 337-F(vi), 337-H(2), 427, 114, 148, 149 P.P.C. His bail plea has been declined by learned Additional Sessions Judge, Kashmore vide Order dated 31.07.2024, hence this bail application.

2. The facts in brief as per F.I.R. are that there was a dispute between the parties over landed property, and on 01.06.2024, the complainant, along with his brothers, namely Dost Ali and Asad Ali were busy preparing the field for Pedy crop with the tractor when at about 08:00 a.m. eight persons namely Bakht Ali, Hakim Ali, Zulfiqar Ali, Umed Ali, Aftab Ali, Ahsan Ali, Irshad Ali and Amanat Ali all by caste Mazari having deadly weapons came there and alighted the brother of the complainant namely Dost Ali from tractor and on the instigation of accused Hakim Ali co-accused Amanat Ali fired upon his brother, which hit him on right side of his back and crossed the body whereas rest of the accused by making butt blows by their respective weapons damaged the body and front lights of the tractor and made aerial firing by saying that if they do not settle the landed dispute, they will be done to death. Hence, this F.I.R.

3. Learned counsel for the applicant has contended that the applicant/accused is innocent and has been falsely implicated by the complainant with malafide intention and ulterior motives; that there is a delay of 23 days in the lodgment of the F.I.R. as the alleged incident

occurred on 01.06.2024 and the F.I.R. was lodged on 23.06.2024, for which no plausible explanation has been furnished by the complainant; that subsequent incident occurred where the complainant party assaulted the accused party and injured family members, and in such regard another F.I.R. No.104/2024 has been lodged on 01.06.2024; that there is dispute over the landed property. Learned counsel for the applicant has drawn the attention of the Court to the bail-granting Order of the learned Additional Sessions Judge, Kashmore, in Criminal Bail Application No.155 of 2024, whereby the learned Court vide Order dated 31.07.2024 granted bail to the co-accused. He believed that the rule of consistency applies to the present applicant as the mere presence of the applicant has been shown in the F.I.R.; otherwise, no specific role has been attributed for causing any firearm injury to injured Dost Ali. He submits that in Section 337-N(2) P.P.C punishment is only two years for hardened and desperate persons whose records reflect that they are habitual criminals. Therefore, interim pre-arrest bail granted to the applicant/accused vide Order dated 02.08.2024 may be confirmed on the same terms and conditions. In support of his contentions, he relied upon the cases reported as **2007 MLD 1067 (Muhammad Yaqoob and 4 others v/s. The State) and 2008 SCMR 173 (Muhammad Daud and another v/s. The State and another)**.

4. Today, none is present for the complainant; however, the record reflects that Mr. Miran Bakhsh Soomro, the advocate, had filed his vakalatnama on behalf of the complainant. The learned Additional Prosecutor General, Sindh, submits that although the name of the applicant/accused is mentioned in the F.I.R., but no specific role has been attributed to him, and only a general role has been assigned, and admittedly, there is a delay in the lodgment of the F.I.R. He further submits that the applicant has not caused any firearm injury to the injured. However, he has damaged the body of the tractor and its lights, and such an offence in terms of section 427 regarding mischief, causing damage to the tractor, carries a punishment of up to two years. However, he concedes that no firearm injury has been attributed to the applicant accused, and he only shared common intention, which will be determined by the learned trial Court after recording evidence; hence, he has no objection to the confirmation of bail to the applicant/accused.

5. Heard learned counsel for the applicant, learned Additional Prosecutor General Sindh, and perused the material on record.

6. From the perusal of the F.I.R, it reflects that the incident took place on 01.06.2024. However, the F.I.R was registered on 23.06.2024 with a delay of about twenty-two (22) days, which has not been plausibly explained by the complainant. Moreover, as per the contents of FIR, no specific role in the commission of the offence has been assigned to the present applicant; rather, his presence at the scene is merely indicated. The injury sustained by the victim, Dost Ali, is explicitly attributed to co-accused Amanat Ali. Furthermore, the FIR reveals old enmity between the parties over landed property. Thus, the possibility of false implication of the applicant cannot be ruled out. The offences for which the applicant is allegedly involved do not fall within the prohibitory clause of Section 497 Cr.P.C, and the grant of bail in such cases is a rule, while refusal is an exception. In the case of **Muhammad Tanveer V/S State (PLD 2017 SC 733)**, the Supreme Court of Pakistan has expressed astonishment and sadden that bail is routinely denied in situations and in offences that don't come within the restriction provided in section 497 of the Cr.P.C on dubious justifications and the same was considered as an unnecessary financial burden on the general public, especially those accused of such crimes. The relevant part of the judgment is reproduced as under:-

"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This court is purely a constitutional court to deal with intricate questions of law and the Constitution and to lay down guiding principles for the courts of the country where law points require interpretation.

7. From the facts and circumstances as stated above and from the tentative assessment of the material available on record, the applicant has made out a case for the grant of bail. Therefore, the bail application is allowed. Interim pre-arrest bail already granted to the applicant named

above vide Order dated 02.08.2024 is confirmed on the same terms and conditions.

8. Needless to mention, the observations made hereinabove are tentative and would not influence the learned Trial Court while deciding the case of either party at trial.

Judge

Manzoor