

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-400 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

15.05.2023.

Mr. Muhammad Sachal R. Awan advocate for the applicants.
Mr. Syed Tariq Ahmed Shah advocate for the complainant.
Ms. Sana Memon, Assistant prosecutor General, Sindh.
Applicants are present on ad interim pre-arrest bail.

O R D E R

MUHAMMAD IQBAL KALHORO, J:- On 10.08.2022, when applicants duly armed with deadly weapons including guns, hatchets etc. were found ploughing through Tractor lands of complainant situated near Deh Rajar, within limits of PS Kaloi, District Tharparkar, they were called out by complainant party. In response, they assaulted complainant party by making multiple fires from their weapons and causing blunt side hatchet blows to atleast three women PWs. In all, they injured seven persons causing them several firearm injuries on their person. FIR was however registered on 07.03.2023 which is almost after more than seven months but in which each accused has been identified with his specific role.

Taking ground of delay in FIR; and that this is a counter-case of FIR Crime No.31/2022 at the same PS by the applicants against the complainant party; and that in the Challan section 324 PPC has been expunged by the Investigation Officer making the case to be of further inquiry, learned defence counsel has pleaded for confirmation of bail.

His arguments have been rebutted by learned counsel for complainant stating that on the very first day complainant party had approached the police for FIR and were issued letters for medical treatment. But when they did not register FIR even after issuance of final medical certificates, complainant party moved applications to the higher authorities of the police and ultimately filed an application u/s 22-A/B CrPC for registration of FIR which, when was allowed, was challenged by the applicants before this Court and succeeded in

getting stay. In this case, police from the very onset has been extending favor to the applicants as has been observed by learned Magistrate before whom the Challan was submitted and who has recommended action against I.O. He has relied upon 2021 SCMR 1983 and 2020 SCMR 1486 in support of his arguments.

Learned Assistant PG has also opposed bail to the applicants stating that all the applicants have been assigned specific role and mere fact that there was a case registered by the applicants against the complainant party would not imply that they are entitled to the concession of pre-arrest bail.

I have heard the parties, perused material available on record and taken guidance from the case law cited at bar. Applicants are specifically nominated in FIR for causing multiple firearm injuries to the PWs who include atleast three women who received injuries from blunt side weapon however. On the very first day i.e. 10.08.2022, when this incident took place, complainant party approached the police and were given letters for medical examination. Therefore, delay, if any, in registration of FIR is not on the part of the complainant but it is in the account of police who failed to act in terms of Section 154 CrPC even after receiving final medical certificates disclosing commission of cognizable offence. Learned counsel for complainant has brought on record a copy of application which complainant party had addressed to the high officials of police complaining against the police of PS Kunri for not registering the case but to no avail. And ultimately complainant party had to file an application u/s 22-A/B CrPC for the same purpose but order passed thereon was frustrated in Criminal Miscellaneous Application filed before this Court.

Further dubious role of Investigating Officer is prima facie established from the remarks of learned Magistrate who in his order dated 20.03.2023 has recommended action against him for deleting Section 324 PPC in this case; which prima facie from the alleged acts of the applicants appears to be attracted. In any case, it appears that complainant party from the very first day has been approaching police for registration of FIR and it was the police who kept the matter lingering on for the reason best known to them and ultimately had to register FIR only on Court's order.

Insofar as counter case registered by applicants against the complainant party is concerned, the complainant party has already been acquitted vide judgment dated 07.02.2023 and a perusal of judgment, produced in arguments, shows that learned trial Court has observed that the medico-legal office in his evidence has not ruled out fabrication of the injury which was to only one person and that too on little finger of his right hand, whereas from the side of complainant atleast seven persons sustained several injuries prima facie supported by medical evidence. It is settled even otherwise that mere cross version would not imply an automatic right of bail to accused without assessing the merits tentatively of the case. No case therefore as far as relief of pre-arrest bail meant only to protect an innocent person arraigned falsely to save him from rigour of arrest, required otherwise in non bailable offence, is concerned, is made out in favor of the applicants, as there appears to be no malafide on the part of complainant. Accordingly, the bail application is dismissed and ad-interim pre-arrest bail granted to applicants vide order dated 28.04.2023 is hereby recalled.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE