

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

**Criminal Bail No.S-279 of 2023**

Applicants: (1). Wahid Bux son of Khair Muhammad Brohi.  
(2). Manzoor son of Ghulam Qadir Brohi through Mr. Amanullah Luhur, Advocate.

Complainant: Allah Rakhio Babbar through Mr. Sher Ali Chandio, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

**1<sup>st</sup> Criminal Bail No.S-363 of 2023**

Applicants: (1). Gulzar son of Ghulam Qadir Brohi  
(2). Asghar alias Ali Asghar son of Muhammad Bux Brohi through Mr. Amanullah Luhur, Advocate.

Complainant: Allah Rakhio Babbar through Mr. Sher Ali Chandio, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 28.08.2023

Date of Order: 28.08.2023

**ORDER**

**SHAMSUDDIN ABBASI, J.-** Through this single order, I intend to dispose of captioned bail applications, wherein applicants Wahid Bux and Manzoor in Criminal Bail Application No.S-279 of 2023 seek pre-arrest bail and applicants Gulzar and Ali Asghar in Criminal Bail Application No.S-363/2023 seek post bail in the case emanating from F.I.R No.09/2023, registered at Police Station Kakkar for offence punishable under Sections 365, 324, 511, 337-H(ii), 148, 149, 504, 337-A(i), 337-L(2), 337-D P.P.C. after their bail pleas were declined by the learned Additional

Sessions Judge-IV, Dadu vide orders dated 04.03.2023 and 10.06.2023 respectively.

2. The facts in a nutshell are that on 16.2.2023 complainant lodged FIR alleging therein that since they were residing in tents as their houses were demolished in the flood, his nephew Allahdad son of Abdul Lateef Babbar was also residing with them. Few days back Allahdad Brohi and others maltreated his nephew and expelled him, therefore, they met with accused and asked that why they maltreated Allahdad Babar, on that they told that the boy has committed wrong and they will see them. On 14.02.2023, in the night, complainant alongwith his son Muneer, daughter-in-law Mst. Dur Naz and granddaughter Nazeeran and nephew Rahimdad were available in their tents, when at about 09:30 p.m. they saw on solar power light that accused Pir Bux @ Fareed having K.K, Dodo, Allahdad having pistols, Gulzar having danda, Wahid Bux having gun, Asghar having danda, Meer having K.K, Manzoor having repeater all by caste Brohi and two unknown accused illegally entered into their tent. Accused Pir Bux, Dodo, Allahdad caught hold the granddaughter of the complainant Nazeeran from her arms and tried to kidnap her but she raised cries, therefore, his son Muneer, daughter-in-law Mst. Dur Naz and nephew Rahimdad tried to rescue her, but accused Asghar caused danda blows to Mst. Dur Naz on chest and other parts of body, accused Gulzar caused danda blow to Muneer on his head and other parts of body. Mst. Nazeeran got released herself and went towards another tent but accused Dodo with intention to commit her murder fired from his pistol at her, which hit at left side of abdomen, then all accused ran away while making aerial firing. The complainant after necessary formalities shifted Mst. Nazeeran to Larkana hospital. Hence this F.I.R.

3. Learned counsel for the applicants has mainly contended the applicants/accused are innocent and they have been falsely implicated in this case by the complainant due to

enmity; that there is two days delay in lodgment of the F.I.R. and no plausible explanation has been furnished by the complainant; that the injuries attributed to the applicants/accused Gulzar and Ali Asghar are bailable, whereas mere presence of applicants Wahid Bux and Manzoor has been shown in the F.I.R. at the scene of offence without assigning any specific role. Learned counsel further submitted that case of the applicants/accused requires further enquiry under section 497 Cr.P.C. and he finally prayed for grant of bail to the applicants/accused.

4. On the other hand, learned Deputy Prosecutor General appearing for the State duly assisted by the learned counsel for the complainant has opposed the grant of bail to the applicants/accused on the ground that the applicants/accused are nominated in the F.I.R. with specific role; that the alleged offence is heinous one and case comes within the ambit of prohibitory clause of section 497 Cr.P.C. Hence the applicants/accused are not entitled for grant of bail.

5. Heard learned counsel for the applicants, learned counsel for the complainant, learned Deputy Prosecutor General and perused the material available on record. Admittedly, there is delay of two days in lodgment of F.I.R. without furnishing plausible explanation by the complainant as the alleged incident has taken place on 14.02.2023 at 09:30 p.m. whereas F.I.R. has been lodged on 16.02.2023 at 07:30 p.m. In the background of enmity, it cannot be ruled out that the F.I.R. has been lodged after due deliberation and consultation. Applicants Ali Asghar and Gulzar were arrested on 21.02.2023; as far as their role is concerned, applicant Ali Asghar caused lathi injury to Mst. Dur Naz and applicant Gulzar caused lathi injury to P.W. Munir. As per the medical certificate of injured Mst. Dur Naz, she sustained three injuries, which offence falls under section 337-L(2) P.P.C, which is punishable for two years and is bailable; whereas medical certificate of Munir shows that he sustained only two injuries viz *Shajjah i Khafifah* and other hurts fall under section

337-A(i) and 337-L(2) P.P.C and both the offences are bailable. Case has been challaned and the applicants are no more required for further enquiry and they are behind the bar without any progress in trial and question of vicarious liability would be decided in trial, therefore, I am of the considered view that applicants Gulzar and Ali Asghar are entitled to grant of post arrest bail, whereas role of co-accused Wahid Bux and Manzoor is concerned, no specific role has been assigned to them and only their mere presence has been shown at the scene of offence. It is well settled proposition of law that if the accused is granted post arrest bail then same plea can be granted to accused who has applied for pre-arrest bail. Reliance in this respect is placed on case law reported as 2020 SCMR 451 (***Attaullah v/s. The State through A.G Khyber Pakhtunkhwa and another***), 2020 SCMR 340 (***Khiyal Saba and another v/s. The State and another***). The Hon'ble Supreme Court of Pakistan in the case reported as 2021 SCMR 2086 (***Kazim Ali and others v/s. The State and others***) has held as under:

“.....During course of arguments, it has been pointed out that four co-accused of the petitioners were taken into custody by the local police and they have been granted post-arrest bail by the court of competent jurisdiction, which has not been challenged by the complainant at any forum. We are conversant with the fact that as per the contents of the crime report, the case of either of the petitioners cannot be distinguished from the four co-accused who have been granted the concession of post-arrest bail. In such like situation, when it is admitted fact that the role ascribed to a larger number of accused is of general nature and that cannot be distinguished from each other, if 4 out of 17 accused have already been granted bail by the court of competent jurisdiction which remains unchallenged by the complainant, any order by this Court on any technical ground that the consideration of pre-arrest bail and post-arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioners because of the reason that soon after their arrest they would be entitled for the concession of post-arrest bail on the plea of consistency. In a similar situation in the case reported as Muhammad Ramzan v. Zafarullah (1986

SCMR 1380), the respondent, who was involved in a murder case, was allowed pre-arrest bail by the learned High Court while the other similarly placed co-accused were granted bail after arrest. The complainant did not challenge the grant of bail after arrest to the similarly placed co-accused and sought cancellation of pre-arrest bail granted to the respondent before this Court by filing a criminal petition but this Court dismissed the petition for cancellation of bail by holding that “no useful purpose would be served if the bail of Zafar Ullah Khan respondent is cancelled on any technical ground because after arrest he would again be allowed bail on the ground that similarly placed other accused are already on bail.”

6. In view of the foregoing reasons and discussion, I am of the considered view that the applicants have successfully made out their case for grant of bail. Accordingly, instant criminal bail applications are allowed. Applicants Gulzar and Ali Asghar are admitted to bail subject to their furnishing a solvent surety in the sum of Rs.100,000/- (*Rupees One Hundred Thousands only*) each and P.R bonds in the like amount to the satisfaction of the learned trial Court. Whereas interim pre-arrest bail granted to applicants Wahid Bux and Manzoor vide order dated 02.06.2023 is confirmed on the same terms and condition.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of either party at trial.

**Judge**

Manzoor