

ORDER SHEET
 IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
 Cr. Bail Appln. No.S-509 of 2020.
 Cr. Bail Appln. No.S-517 of 2020.

Date

Order with signature of Hon'ble Judge

Mr. Shahbaz Ali M. Brohi, advocate for the applicants in Cr. Bail Appln. No.S-509/2020, along with applicants.

Mr. Naseer Ahmed Waggan, advocate for the applicant in Cr. Bail Appln. No.S-517/2020.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Mr. Habibullah G. Ghouri, advocate for the complainant.

Date of Hearing : 12.04.2021.
 Date of decision : 19.04.2021.



ORDER

Omar Sial, J.- Ali Akbar on 23-8-2020 recorded information at the New Foujdari Police Station of an incident which had occurred on 20-8-2020. He recorded that on 20-8-2020 he had an altercation with Meeral Bhutto on an agricultural issue and that Bhutto had at that time threatened him of dire consequences. On 21-8-2020 he along with 5 others was returning from the mosque when they were intercepted by 9 persons. Akbar and the others with him identified 7 of them as being (i) Meeral Bhutto with a stick in his hand (ii) Gul Mohammad with a gun (iii) Adam with a pistol (iv) Nazir with a pistol (v) Ghulam Hussain with a Kalashnikov (vi) Gulab with a pistol (vii) Murtaza with a stick. 2 were unknown to the complainant party. Upon the instigation of Meeral Bhutto an attack by the accused party took place, which attack resulted in Gul Mohammad opening fire upon Ali Mohammad; Adam and Nazir opening fire on Mohammad Aslam; Meeral beating Mohammad Suleman with a stick; Ghulam Hussain hitting Mohammad Suleman with the butt of his Kalashnikov; Gulab hitting Nisar Ahmed with the butt of his pistol, whereas Murtaza and the 2 unknown men also beat the complainant with sticks. The shooting and beating had resulted in serious injuries to several of the complainant party members. F.I.R. No.173 of 2020 was registered under sections 114, 324, 148, 149, 337-H(ii), 337-A(i), 504 and 34, P.P.C.



2. Out of the 9 accused, (i) Meeral Bhutto, (ii) Gulab alias Gulsher Ali Bhutto, (iii) Gul Hassan Bhutto, (iv) Adam Khan Bhutto, (v) Nazir Ahmed Bhutto and (vi) Ghulam Hussain Bhutto applied for the grant of bail before the Sessions Judge, Shikarpur, but their application was dismissed on 1-10-2020. They have now sought the same relief from this court. Apart from Ghulam Hussain, who has applied for post arrest bail, the others have sought pre-arrest bail.

3. Learned counsel for the applicants in their arguments have laid great stress on the point that the medical evidence collected does not reconcile with the ocular evidence and in this regard have cited some cases wherein the concession of bail was given when such a situation had occurred. They have also argued that the shots fired by the applicants hit the non-vital parts of the injured hence the ingredients of section 324, P.P.C. were not attracted; that there has been a delay in the lodging of the F.I.R and that the injuries caused attracted a punishment of less than 10 years and thus fell within the non-prohibitory clause of section 497, Cr.P.C. Finally, they argued that a special medical board had re-examined the injuries to Suleman and had concluded, contrary to the medical report issued earlier, that Suleman had not sustained a skull fracture.

4. To the contrary, the learned counsel for the complainant as well as the learned D.P.G have argued that the accused party had inflicted a brutal attack on the complainant party; that the learned counsel for the applicants had not argued any *malafide* that would have resulted in a false accusation; while the F.I.R. was a bit delayed, in the circumstances of the case the delay is not material as the injured had all gone to the hospital immediately after the event and as they were seriously injured they had to be shifted to a different hospital where better facilities were available, as such they were not in a position to lodge the F.I.R. immediately after the incident; that the incident occurred in broad daylight and thus wrong identification of the accused was not possible; that the statements of all the injured are on record; that in the case of the injuries caused to Ali Mohammad, the ingredients of section 324, P.P.C. are fully attracted and that there is no inconsistency between the ocular and medical evidence.

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5. I have heard the learned counsel for both the parties as well as the learned D.P.G. at great length and with their able assistance also perused the record. My observations are as follows

6. The incident is said to have occurred at 6.30 a.m. on 21-8-2020 and the medical reports on record reflect that the injured were brought to the hospital at 7.40 a.m. As a heavy reliance has been placed by the learned counsel for the applicants on the inconsistencies between the ocular and medical version, it would facilitate reference if a bird's eye view of the injuries caused was given as below:

Injured	Description of injury	Opined by doctor to fall within the definition of:	Injury attributed to by the complainant
Suleman	Lacerated wound on his head causing two fractures.	1 Shajjah e Hashimah	Ghulam Hussain with his KK butt. Meeral with his stick.
Muhammad Aslam	2 firearm injuries on his left leg.	2 Jurh Ghair Jaifa Munaqillah	Adam and Nazir fired upon him
Nisar Ahmed	2 lacerated injuries, one each on his right leg and right hand.	1 Jurh Ghair Jaifa Damiyah 1 Jurh Ghair Jaifa Hashimah	Gulab with his pistol butt.
Ali Muhammad	5 firearm injuries ranging from his upper abdomen down his legs.	5 Jurh Ghair Jaifa Damiyah	Meeral and Gul Mohammad

7. I am at a loss to understand as to how in this alleged brutal attack, Ali Akbar, the complainant, did not even receive a minor injury whereas all others in his party were injured. It seems from the account given by the complainant in the F.I.R. that Meeral was angry with him (Ali Akbar) and that when he instigated the other accused he said that lets kill Ali Akbar and others. Further, it appears unnatural to me that in the midst of an alleged brutal attack on his dear ones, Ali Akbar stood and recorded which accused hit which member of the complainant party on which part of the body. Whether Ali Akbar was even present at the time of the incident will require further inquiry. At this preliminary stage and upon a tentative assessment, I find it *prima facie* unnatural and improbable that each of the injured has recorded the same statement and given exactly the same details of the injuries caused, the number of injuries caused and the identification of each accused who caused the injuries. It would be reasonable to assume at this stage that in an alleged brutal attack as the

present one, a person injured, some with firearm injuries would not have the coherence or be in a state of mind where after and before getting injured they would record a similar sequence of events.

8. Nisar Ahmed was alleged to have been hit by Gulab *alias* Gulsher Ali Bhutto with his pistol butt, however, the medical evidence shows that the injuries caused to him were firearm injuries. All the injuries sustained by Ali Muhammad were firearm injuries and thus the allegation that Meeral, hit him with a stick, upon a tentative assessment, does not appear correct. Suleman's injury, attributed to Ghulam Hussain Bhutto, which was noted by the doctor in Shikarpur as being 2 fractures on the skull was negated by a 7 member medical board which observed that there was no fracture on the skull but that there was a lacerated wound on the head that had exposed the bone.

9. Upon a tentative assessment there appears to be little reason for the F.I.R. to be delayed by 3 days, especially in light of the fact that the inspection of injuries was done on 21-8-2020, to which the complainant and Nisar Ahmed are witnesses. There is nothing on record to show that the injured were taken to a hospital in Sukkur the same day of the incident. To the contrary, Nisar Ahmed's medical report showed that his X-ray was done at the hospital in Shikarpur and that too on 31-8-2020. The impact of the delay on the prosecution case will be decided by the learned trial court after evidence is led but at this stage the F.I.R. having been recorded after consultations, possibly tainted with *malafide*, as well as an attempt to throw the net wide cannot be conclusively ruled out.

10. A serious incident like the present one where shots have been allegedly freely fired would definitely attract the attention of people, especially when it is alleged that the incident took place outside a mosque in a small town in broad daylight and right after 'fajar' prayers. Upon a tentative assessment, no independent person being witness to such an incident appears odd. This aspect requires further inquiry.

11. No recovery of any nature has taken place. The Kalashnikov of the accused in custody was also not recovered nor were any empties or blood stains from the place of occurrence. Learned counsel for the complainant has argued that the reason for this was that the place of incident was agricultural land and as the same was inspected 3 days after

the incident hence all clues had vanished. The memo of inspection of place of incident however appears to reflect that the incident occurred right outside a mosque and that no footprints were even found on the spot. Any lapse which has occurred *prima facie* appears to be as a consequence of delay occasioned on behalf of the police and the complainant party itself. This aspect of the case also requires further inquiry.

12. The punishments for the injuries (except that under section 324 P.P.C.) which have been caused, keeping in mind the fact that Suleman's fracture is doubtful, all carry a potential sentence of upto 7 years and thus though non-bailable fall within the non-prohibitory clause of section 497, Cr.P.C. While this fact alone would not entitle the applicants to bail, the role of the applicants, including the charge of section 324, P.P.C. against them, because of the above observations requires, further inquiry.

13. In view of the above tentative assessment, the interim pre-arrest bail granted to (i) Meeral Bhutto, (ii) Gulab alias Gulsher Ali Bhutto, (iii) Gul Hassan Bhutto, (iv) Adam Khan Bhutto and (v) Nazir Ahmed Bhutto is confirmed on the same terms and conditions, whereas Ghulam Hussain Bhutto is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs.100,000/- and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

14. The applicants however are directed to co-operate fully with the investigating officer. The learned trial court is directed to conclude the trial of the applicants within a period of 6 months from the date of the order and report compliance through the learned Additional Registrar of this Court.


17/4/21
JUDGE