

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT HYDERABAD**

Cr. Bail Application No. S- 126 of 2020

DATED	ORDER WITH SIGNATURE OF JUDGE
--------------	--------------------------------------

For orders on office objection.
For hearing of main case.

27.07.2020

Applicants are present on interim pre-arrest bail.
 Mr. Rai Singh Sodho, Advocate for applicants.
 Mr. Muhammad Hassan Chandio, Advocate for complainant.
 Ms. Sana Memon, A.P.G. for the State.

=

ZAFAR AHMED RAJPUT, J.- Through instant criminal bail application, applicants 1. Hothi s/o Dilawar, 2. Halo s/o Hothi, 3. Shabir Ali @ Shabir s/o Punhoon and 4. Sawan s/o Naseer, all by caste Juneja, seek pre-arrest bail in Crime No.06 of 2020, registered at P.S Mithi for offence u/s 324, 504, 34 PPC. Their earlier bail application bearing No. 27 of 2020 was rejected by the learned Additional Sessions Judge-I, Tharparkar at Mithi vide order dated 31.01.2020. The applicants were admitted to ad-interim pre-arrest bail by this Court, vide order dated 10.02.2020, now they seek confirmation of their bail.

2. Briefly stated, facts of the prosecution case as disclosed in FIR are that on 17.01.2020 at 2200 hours complainant Hameer lodged the aforesaid FIR, alleging therein that on account of matrimonial dispute they were on inimical terms with accused Hothi and others and as per Rajwani Faisla, accused Shabir and others were restrained not to come to their village. It is further alleged that on the day of incident, complainant had gone to Mithi, where he was informed through phone call by one Ilyas son of Sulleman that he (Ilyas), Ali Bux son of Rehmat Ali, Ali Ghulam and Deedar son of Saindad after offering 'Jumma' prayer were returning to home, in the meantime Ali Bux and Ali Ghulam exceeded to them and when, at about 1430 hours, Ali Bux and Ali Ghulam

reached in front of the School, accused Hothi son of Dilawar having hatchet in his hand, 2. Halo son of Hothi having hatchet, 3. Shabbir son of Punhoon having hatchet and 4. Sawan son of Naseer having lathi encircled them. Thereafter, accused Hothi caused sharp side blow of his hatchet to Ali Bux on his head with intention to kill him, accused Shabir also caused hatchet blow to Ali Bux with intention to kill, accused Sawan caused lathi blow to Ali Ghulam, on that Ilyas and Deedar shouted not to kill them. Meanwhile, Mst. Sakina wife of Saindad came running from her house to rescue them to whom accused Halo caused hatchet blow on her head with intention to kill her but Ilyas and Deedar intervened and rescued the injured from the accused persons, who then went away while abusing. On hearing such facts from Ilyas, the complainant went to his house where he inquired from injured Ali Ghulam who also disclosed the same story and then he brought the injured to Civil Hospital, Mithi for treatment and then lodged the FIR.

3. Learned counsel for the applicants has mainly contended that the applicants are innocent and have been falsely implicated in this case by the complainant malafidely and with ill will due to old matrimonial enmity; that earlier to the present FIR, the complainant party lodged two other FIRs against the accused persons in the year 2010 and 2011 viz. FIR No.44/2010 and 81/2011 at P.S Matli with same set of witnesses however, the accused persons were acquitted of the charge in Crime No.44/2010 by the trial Court while the case in FIR No.81/2011 was disposed under 'C' class of Police Rules; that no such incident took place and the alleged injuries are self-suffered and in order to substantiate their allegations, the complainant party managed false, fake and bogus medical certificate by using their influence; that even as per the facts of FIR none of the applicants caused multiple injuries to the injured persons hence the application of Section 324 PPC shall be determined at the time of trial and it is the fit case for further inquiry, entitling the applicants for the grant of pre-

arrest bail. Learned counsel in support of his contentions has relied upon the case of *Awal Khan and 7 others v. The State through AG-KPK and another* (2017 SCMR 538) and *Jan Muhammad v. Haji Noor Jamal and another* (1998 SCMR 500).

4. On the other hand, learned counsel for the complainant as well as A.P.G. for the State have vehemently opposed the grant of pre-arrest bail to the applicants. They have maintained that the applicants are nominated in the FIR with specific role; that there is no conflict between ocular and medical account; that as per final medical certificate injured Ali Bux sustained two injuries; one falling u/s 337-A(i), PPC and other u/s 337-A(iv), PPC. The medical certificate was challenged by the accused party before the Special Medical Board constituted by Directorate General Health Services, Sindh, Hyderabad and as per Medical Board, the injury opined by the Medical Officer as Shajjah-i-Munaqqillah fallen u/s 337-A(iv), PPC was found as Shajjah-i-Hashimah fallen u/s 337-A(iii), PPC punishable for 10 years and the said injury has been attributed in the FIR to accused Shabir Ali @ Shabir.

5. Heard learned counsel for the applicants, complainant and A.P.G for the State as well perused the material available on record with their assistance. It appears that though the complainant is not eye witness of the incident but he has nominated the accused persons with their specific role as per the information given to him by eye witnesses Ilyas as well as injured Ali Ghulam who have also given the ocular account in their 161 Cr.P.C statements, which on examination prima facie appears to be the same as given by the complainant in the FIR. It further appears that FIR has been lodged u/s 324, 504, 34, PPC but after receipt of the medical certificates of the injured so also the opinion of the Special Medical Board, it was transpired that Mst. Sakina sustained an injury falling u/s 337-A(i), PPC while Ali Bux sustained two injuries, inflicted from sharp cutting instrument and hard and blunt substance, one Shajjah-i-

Khafifa fallen u/s 337-A(i), PPC (attributed to accused Hothi) while other Shajjah-i-Hashima u/s 337-A(iii), PPC (attributed to accused Shabir Ali @ Shabir). The injuries inflicted to the injured u/s 337-A(i), PPC are bailable while injury u/s 337-A(iii), PPC is punishable for 10 years as such the main injury is u/s 337-A(iii) PPC which is specifically attributed to accused Shabir Ali @ Shabir hence prima facie sufficient evidence is available to establish that the said accused is involved in a case which is punishable for 10 years. So far the enmity is concerned, it is always considered as double edged sword. There is no reason to believe that such incident did not take place and the alleged injuries are self-suffered as argued by learned counsel for the applicants. The element of malice and ill-will for implicating the applicants / accused in commission of alleged offence though has been argued by the learned counsel for the applicants but nothing has been produce on record to prove it.

6. For the foregoing facts and reasons, instant criminal bail application to the extent of applicants 1. Hothi s/o Dilawar, 2. Halo s/o Hothi and 3. Sawan s/o Naseer is allowed and the interim pre-arrest bail granted to them on 10.02.2020 is hereby confirmed on same terms and conditions, while bail application of applicant / accused Shabir Ali @ Shabir son of Punhoon is dismissed and the interim pre-arrest bail granted to him is hereby recalled.

JUDGE

Tufail