

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Crl. Bail Application No. S- 275/2024.

Date of hearing	Order with signature of Judge
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For hearing of bail application.

O R D E R.
26.09.2024.

Syed Zaffar Ali Shah, Advocate for applicants.
Mr. Noor Hassan Malik, Advocate for complainant.
Mr. Khalil Ahmed Maitlo, D.P.G.

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MAHMOOD A. KHAN J., Applicants seek pre-arrest bail in Crime No. 45/2024 registered at Police Station Tharu Shah said to have been occurred on 10.02.2024 for offences under sections 392, 337-F(i), 337-F(v) PPC, after rejection of their bail plea for the same relief by learned Additional Sessions Judge-III Naushehro Feroze Court vide order dated 28.03.2024.

2. In a nut shell the crux of the allegations against the applicants are that on 10.02.2024 at 2.30 pm they along with co-accused having weapons, iron rod and DANDAS entered in the house of complainant, issued threats of murder. Accused Rashid Ali and Mir Muhammad committed dacoity of cash and gold and on resistance of the complainant, they both caused butt blows to

complainant on his left arm who fell down, however, on arrival of persons/witnesses, accused run away.

3. Learned counsel for applicants contends that the section relating to robbery has not been put up in the final challan, there is inordinate and unexplained delay of 16 days in lodging of the FIR. That since challan has been submitted the applicants are no longer required for investigation and may be considered for bail. He further contended that case is not hit by the prohibitory clause (although learned counsel for applicant has not pointed out the said element from the record). He further contended that injuries carries maximum punishment of three years; that a civil dispute between the parties over demarcation is pending; that role of Rashid Ali and Mir Muhammad who were allegedly armed with weapons yet no fire arm discharge is reported. He also contends that identification source of bulb is weak type of identification. He has also contended that one injury has been reported which is alleged against two persons and as such the case of applicants requires for further enquiry. He relies upon the cases of Muhammad Tanveer vs. The State and other (PLD 2017 Supreme Court 733), Muhammad Ijaz vs. The State and another (2022 SCMR 1271), Abdul Ghani Lashari vs. The State (2020 P.Cr.L.J Note 70) and Wali Muhammad alias Hajjan and others vs. The State (2022 P.Cr.L.J Note 66).

4. Learned counsel for complainant, however, contends that delay has been explained as the treatment was given priority. He further relied upon the cases of Qayyum Khan vs. The State (2022 SCMR 273), unreported order dated 14.04.2024 passed by this Court in Criminal Bail Application No. S-128 of 2022 and order dated 27.01.2023 in Criminal Bail Application No. S-624 of 2022 contended that in similar cases and even cases on better footings bail has been refused.

5. Learned DPG, however, contended that though section 392 PPC has been deleted instead thereof section 397 PPC inserted in the final challan . He further contended that joint liability is liable to be construed. That the delay has been explained in the FIR he opposes grant of bail to the applicant/accused.

6. Learned counsel in rebuttal has reiterated the element of further enquiry being available.

7. Having heard learned counsels and gone through the record.

8. Record shows that pre-arrest bail was obtained by the applicants from the Court of learned Additional Sessions Judge-III Naushehro Feroze , however, the present applicants have failed to join the investigation. It also comes from the record that only one injury is available whereas allegations have been made against both the applicants Rashid Ali and Mir Muhammad who have failed to

join the investigation available to them. As such, they have failed to take advantage of the opportunity provided to them. The applicants do not possess the qualifications for the further inquiry; however, the applicant Yassen, son of Mumtaz Ali, is found to be eligible, as his role is not deemed active, therefore, he is entitled to the concession of pre-arrest bail.

9. Accordingly this bail application stands allowed only to the extent of Yaseen son of Mumtaz Ali accordingly for him the interim pre-arrest bail already granted to him by this Court vide order dated 08.05.2024 is confirmed on same terms and conditions whereas the concession and bail application to the extent of accused Rashid Ali son of Nazar Muhammad and Mir Muhammad son of Nabi Bux the bail application to their extent is not found tenable and the interim pre-arrest granted to them is hereby recalled and their bail application is rejected.

10. Captioned bail application stands disposed of.

J U D G E

Irfan/P.A