

(87)

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Application No. S- 364 of 2023.

Applicant : Muhammad Moosa Bangulani, through  
Mr. Sharjeel Sattar Bhatti, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,  
Additional Prosecutor General.

Crl. Bail Application No. S- 285 of 2023.

Applicants : Ubedullah Bangulani and 05 others,  
through Mr. Sharjeel Sattar Bhatti, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,  
Additional Prosecutor General.

Complainant : Ali Gul Bangulani, through Mr. Shakeel Ahmed G.  
Ansari, Advocate.

Date of hearing : 06.11.2023.  
Date of Order : 06.11.2023.

**ORDER**

Muhammad Saleem Jessar, J.- Both these bail applications are interconnected having been filed in one and same FIR bearing Crime No.15/2023, registered at P.S Mubarakpur, for offence under Sections 337-A(i), 337-F(i), 337-F(v), 337-L, 504, 506/2, 147, 148, 149, PPC.

2. Applicant Muhammad Moosa Bangulani, after having been declined the concession of post arrest bail by the trial Court/Civil Judge & J.M-II, Jacobabad vide order dated 31.5.2023 and then by the learned Sessions Judge, Jacobabad on 13.6.2023, claims his release on bail; whereas the plea of applicants Ubedullah, Hafeezullah, Hamadullah, Malook, Kehar and Naseer for grant of anticipatory bail was also declined by learned II-Additional Sessions Judge, Jacobabad vide order dated 26.5.2023; hence they have also approached this Court with same plea. The case has been challaned and is said to be pending trial before the Court of Civil Judge & JM-II/MTMC, Jacobabad vide Criminal Case No.nil of 2023 re-The State v. Muhammad Moosa & others, wherein charge has been framed on 17.8.2023; however, no progress has been made in the trial.

3. Applicant Kehar remained absent on previous date. Process issued against his surety is returned served; however, the surety has failed to appear. Since, applicant/accused Kehar has appeared today, as such, the notice issued to his surety is hereby vacated.

4. According to the case of prosecution, on 05.05.2023, at 5.00 p.m., present applicants along with three unidentified accomplices attacked upon the complainant party due to the dispute over the matter of "Karo-Kari" and caused blows with lathi, wrong side of hatchet and iron rods to complainant Ali Gul Bangulani on different parts of his body.

5. Learned Counsel for the applicants submits that allegation against applicant Ubedullah is of causing wrong side hatchet blow to complainant Ali Gul on his head, which injury has been declared by the doctor as *Shajjah-i-Khafifah*, which is bailable. He further submits that applicant/accused Muhammad Moosa is alleged to have caused iron rod blows to complainant Ali Gul on different parts of his body, which injury(ies) allegedly sustained by injured complainant have been declared to be falling u/s 337-F(v), PPC carrying punishment of 05 years and punishment whereof does not exceed the limits of Prohibition contained in Section 497, Cr.P.C. He submits that in view of admitted enmity between the parties over the matter of 'Karap', false implication of the applicants/accused cannot be ruled out and the case against the applicants/accused required further enquiry. In support of his contentions, he is referring to the cases reported as *Khalil Ahmed Soomro & others v. The State (PLD 2017 Supreme Court 730)* and *Jamaluddin & another v. The State (2023 SCMR 1243)*.

6. Learned Addl. P.G. for the State, submits that the injuries attributed to applicants Ubedullah and Muhammad Moosa carrying maximum punishment of 05 years do not exceed the limit of prohibitory clause and as far the remaining applicants/accused are concerned, they have been assigned general role; besides, the injuries attributed to them are bailable; hence, he does not oppose the bail applications.

7. Mr. Shakeel Ahmed Ansari appearing for the complainant opposes the bail application, on the ground that injury attributed to applicant Ubedullah has resulted in causing disability of the injured, wherein the victim has lost his eyesight, therefore, he is not entitled for bail. He, however, could not controvert the fact that such evidence has not been brought on record by the prosecution; even the doctor has not issued certificate showing such disability of the

victim/complainant. In support of his contentions, Mr. Ansari has relied upon the cases reported as *Shabeer Ahmad alias Shibli v. The State (1999 PCr.LJ 1348)* and *Umer Khan v. The State & another (2022 SCMR 216)* and submits that in spite of the fact that the injuries attributed against the petitioners in the supra reported cases were not falling under the prohibitory clause of Section 497, Cr.P.C, even then the Apex Court declined their prayer.

8. Heard learned Counsel for the parties and perused the material available on record.

9. Admittedly, the incident took place on 05.5.2023, whereas the report thereof was lodged on 11.5.2023 i.e. with the delay of about 06 days, for which no plausible explanation has been furnished by the prosecution. The delay in criminal cases is always held by the superior Courts to be fatal for the prosecution. Complainant himself has admitted the enmity with the accused over 'Karap'; however, he has not specifically mentioned in the FIR that against whom such allegation was made by the accused side. The injuries allegedly sustained by the injured and declared by the doctor are not falling within the ambit of prohibitory clause of Section 497, Cr.P.C and in such eventuality the superior Courts have extended grace by admitting the petitioners on bail by holding that where the offence does not fall under the prohibitory clause, grant of bail in such cases becomes a rule and refusal will be an exception. It is settled law that when accused are found entitled for grant of post arrest bail, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while, on the other hand, they are likely to be humiliated and disgraced. In the case of *Muhammad Tanveer v. The State (PLD 2017 Supreme Court 733)* the Apex Court while extending the grace, granted bail and it will be appropriate to reproduce para-6 of the order, which reads as under:-

*"6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."*

10. As far as contention of learned Counsel for the complainant that injured has been made disable due to the injuries caused to him by accused

Ubedullah is concerned, the same is yet to be established by the prosecution before the trial Court after recording it's evidence and the trial Court is competent to determine such accusation against him. In such circumstances and in view of above discussion as well as the dictum laid down by the Apex Court in the reported cases of *Khalid Ahmed Soomro & others* and *Muhammad Tanveer (supra)*, I am convinced that the applicants have made out their *prima facie* case for grant of post arrest as well as pre-arrest bail. The case law cited by learned Counsel for the complainant has no relevancy and is distinguishable on facts and circumstances of this case.

11. In the light of above discussion, both these bail applications are allowed. Interim pre-arrest bail granted earlier to applicants Ubedullah, Hafeezullah, Hamadullah, Malook, Kehar and Naseer is confirmed on same terms and conditions; whereas, applicant Muhammad Moosa shall be released on bail on his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and P.R bond in the like amount to the satisfaction of trial Court.

12. The observations, if any, recorded hereinabove are tentative in nature, which shall not influence the trial Court while dealing with the trial proceedings.

  
JUDGE