

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Bail Application No. S- 17 of 2024.

Applicant : Abdul Waheed Khan Sanghroo, through
M/s Ashfaq Hussain Abro & Tanveer Hussain
Mahoto, Advocates.

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

1st Cr. Bail Application No. S- 511 of 2023.

Applicants : Ghulam Akbar Sanghroo & 5 others,
through M/s Ashfaq Hussain Abro and
Muhammad Ali Memon, Advocates.

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

Complainant : Through Mr. Habibullah G. Ghouri, Advocate.

Date of hearing : 29.01.2024.
Date of Order : 29.01.2024.

ORDER

Muhammad Saleem Jessar, J.- Both these bail applications are interconnected having been filed in one and same FIR bearing Crime No.30/2023, registered at P.S Dakhan, District Shikarpur, for offence under Sections 324, 395, 337-H(1), 337-A(i), 337-A(iii), 337-F(i), 337-F(iii), 337-F(v), 147, 148, 149, PPC. The case has been challaned, which is now pending for trial before the Court of Sessions Shikarpur vide Sessions Case No. nil of 2023 re-The State v. Akbar & others.

2. After having been declined the concession of pre-arrest bail by the trial Court/ Sessions Judge, Shikarpur by common order dated 07.9.2023, the applicants have approached this Court with same plea. In compliance of earlier orders, learned counsel for the applicants placed on record amended title page of Cr. Bail Application No.S-511/2023 as well as certified copy of case diary dated 19.10.2023 issued by 1st Civil Judge & JM, Garhi Yasin, taken on record.

3. According to the case of prosecution, on 13.05.2023, at about 8.00 a.m., near the house of accused Akbar Sanghroo situated on the link road leading from the bungalow of complainant to main road, the present applicants along with others, being armed with KKs, guns, lathies and hatchets, attacked upon complainant Muhammad Hassan Khan Dakhan, inflicted KK butt blows to him on his thighs and was attempting to fire with KK at him, on which complainant's security guard Naeem Mahar intervened, hence accused Akbar inflicted KK butt blows to him on his face and head, robbed weapon from him, besides, accused Ali Bux robbed licensed gun from complainant's private guard Imam Bux Marfani. The complainant was then taken under police protection to PS Dakhan, and the accused persons also went to police station and made aerial firing for spreading terror.

4. Learned Counsel for the applicants submit that the parties are on strained relations over landed dispute, as the applicant No.1 Ghulam Akbar had purchased the land from one Ghulam Abbas (co-accused), who is the cousin of complainant and resides in UK, the complainant being land-grabber has intended to grab the land of said Ghulam Abbas, therefore, said Ghulam Abbas had given attorney to the accused for looking after of his remaining portion of the land. They further submit that the father of complainant, namely, late Muhammad Shahnawaz had filed F.C. Suit No.58/2018 before the Court at Shikarpur for declaration and permanent injunction re-Shahnawaz v. Ghulam Abbas & others, which was dismissed by the trial Court. The appeal filed by the plaintiff before 1st forum was dismissed and its third round is pending adjudication before this Court. As far as instant case is concerned, they submit that initially the FIR was registered by the police showing the occurrence to be of ATC jurisdiction; however, during investigation the third IO had completed investigation and such report was submitted before the Anti-Terrorism Court Shikarpur, who vide his order dated 15.8.2023 acceded to the submission of I.O. in his report u/s 173, Cr.P.C. and returned the case papers to be presented before the ordinary Court. They next submit that allegation of snatching weapon from security guard of the complainant, the complainant as well as said security guard had not specifically mentioned which weapon was with him and even same has not been recovered. They also submit that the PWs Ghulam Nabi and Ali Mardan including said victim have not supported the version of complainant in their respective 161. Cr.P.C statements. They further submit that there are cross-cases between the parties and in said case some of the persons from applicants' side have sustained injuries, even then the persons nominated in that case have been bailed out by the

Court below, therefore, looking to the longstanding dispute over the landed property and considering the cross-cases between the parties, case against the applicants requires further enquiry; hence, pray for grant of bail applications as well as confirmation of interim pre-arrest bail. They also submit that the case of prosecution is of two versions and which one is correct is a question to be determined by the trial Court after recording evidence at trial. In support of their contentions, they place reliance upon the cases reported as *Khalil Ahmed Soomro & others v. The State* (PLD 2017 SC 730), *Muhammad Umar Waqas Barkat ali v. The State & another* (2023 SCMR 330), *Gul Nawab v. The State* (2022 SCMR 547), *Hamza Ali Hamza v. The state* (2010 SCMR 1219) and *Muhammad Zahid Umar v. The State* (2016 SCMR 1246). In rebuttal of the arguments advanced by learned Counsel for the complainant, they submit that applicant Ghulam Akbar had purchased the land from said Ghulam Abbas, which is not the suit land, therefore, argument advanced by learned Counsel for the complainant that the said land was purchased during pendency of suit, particularly during restraining orders, carries no weight.

5. Learned Addl. P.G. for the State, opposes the bail applications on the grounds that applicant Ghulam Akbar has been assigned role of causing butt blows to complainant at his thigh and to Naeem, which landed on his head as well as face, the injury sustained by PW Naeem has been declared as *Shajjah-i-Hashimah* which carries maximum punishment upto 10 years; hence the offence does fall within the ambit of prohibitory clause. He further submits that applicant Ali Bux had also caused butt blow to PW Imam Bux on his head, which is falling u/s 337-A(iii), PPC. As far as remaining applicants/accused are concerned, he submits that though the injuries are alleged to have been caused by them to some of the PWs; however, same have been declared by the medicolegal officer to be either bailable or not attracting the prohibition contained in Section 497, Cr.P.C.

6. Learned Counsel for the complainant opposes the bail applications, on the grounds that on the fateful day there was case hearing between the parties and complainant while proceeding towards the Court was intercepted by the accused in order to commit his *qatl-i-amd*, however, was rescued by his security guard and later he called the police who led them to Court. He further submits that so far the land allegedly claimed by accused Ghulam Akbar that he purchased same from Ghulam Abbas is concerned, it was purchased during pendency of the suit, particularly during existence of the restraining orders. However, he could not controvert the fact that the land so purchased by Ghulam Akbar is not suit land. He also places on record certain photographs as well as

media reports/recordings showing quarrel between the parties at police station. In support of his contentions he places his reliance upon the cases reported as *Riaz Ahmed v. The State* (2009 SCMR 725), *Muhammad Iftikhar Kha v. The State* (2022 SCMR 885), *Ghulam Qadir v. The State* (2022 SCMR 750) and *Bakhti Rahman v. The State* (2023 SCMR 1068).

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

8. Admittedly, the parties are already entangled with each other over landed dispute, which has not been denied by either side. As far alleged injuries attributed to Ghulam Akbar and Ali Bux are concerned, one of co-accused namely, Anees Ahmed had also got registered FIR No.36/2023 at same police station and though said FIR has been recommended by police for its disposal under "C" class, yet the Magistrate has not passed appropriate order over the summary report submitted by police u/s 173, Cr.P.C. on the ground that complainant has assailed the medico-legal certificate issued in favour of injured Akbar. Both parties are claiming each other to be aggressor, therefore, which of the party(ies) is aggressor and which one was aggressed upon is a question to be determined by the trial Court after recording pro and contra evidence of the parties. Longstanding pendency of civil litigation between the parties is sufficient to believe that the prosecution has been initiated motivated for ulterior motives and with mala fide intention; hence, the basic ingredients for grant of pre-arrest bail, as laid down by the Hon'ble Supreme Court of Pakistan in the case of *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427) are fully attracted. For the sake of convenience, the framework within which and the guidelines according to which, the extraordinary concession of pre-arrest bail has to be exercised by the High Courts and the Court of Sessions prescribed by the Apex Court are reproduced below :-

"(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives,

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail,

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to B disagree and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose".

9. As far the role assigned to applicant Akbar that he caused injuries to complainant at his thigh and also butt blows to PW Naeem, since there are counter cases between the parties and both parties alleged each other to be aggressor, therefore, this too is yet to be determined by the trial Court after recording evidence of the prosecution witnesses. Reliance can be placed upon the case of *Mir Hassan v. The State* (1987 PCr.LJ 1336). It is well-settled principle that every accused is to be presumed as blue-eyed child of law until and unless he is found to be guilty of the charge and law cannot be stretched upon in favour of the prosecution, particularly at bail stage, if any benefit of doubt arises, it must be extended in favour of the accused for the purpose of bail. Reference can be had from the case of *Amir v. The State* (PLD 1972 Supreme Court 277). Moreover, the case has been challaned and the applicants after furnishing surety before this Court have joined the trial proceedings and no complaint with regard to misuse of the concession extended to them has been brought on record.

10. In the circumstances and in view of longstanding landed dispute between the parties, the malafide on the part of prosecution stands established; hence, basic ingredients for grant of pre-arrest bail, as has been laid down by learned Apex Court in case of *Rana Muhammad Arshad (supra)* are fully attracted in this case.

11. Accordingly and in view of above discussion, I am convinced that the applicants have made out their *prima facie* case for grant of extraordinary relief in shape of pre-arrest bail. Therefore, both these bail applications are allowed. Interim pre-arrest bail granted earlier to applicants is hereby confirmed on same terms and conditions.

JUDGE