

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Application No. S – 07 of 2021

Date	Order with signature of Judge
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Hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application
(Notice issued)

19.03.2021

Mian Mumtaz Rabbani Advocate for the Applicant
Mr. Abdul Samad Noonari Advocate for the complainant
Mr. Aftab Ahmed Shar, Additional PG for State

ORDER

Aftab Ahmed Gorar, J- Through instant Criminal Bail Application, the applicant/accused Muhammad Riaz S/o Yar Muhammad Khokhar, seeks pre-arrest bail in Crime No.146/2020 registered at Police Station, Kandhra, District Sukkur, for offences punishable under Sections 147, 148, 149, 337-A(i), F(i), F(iv), H(ii), 504, 114, 506/2 PPC.

2. The facts of the prosecution case, in brief are that on 01.12.2020 at 1800 hours, complainant Qamaruddin Shambani lodged the FIR at police Station, Kandhra in respect of the incident, which allegedly took place on 13.11.2020 at 1530 hours, stating therein that on having been refused to accept the offer of sale of their landed property to accused party i.e. Qasim Mahar and Samoon Mahar, on the date of incident, the complainant along with his son Irfan, Nephew Hussain Bux were available in their otaq, when all of a sudden, there came accused Riaz with hatchet, Iqbal with lathi, Qasim with pistol, Hakim with hatchet, Khadim with Gun, Lal Khan

with hatchet, Allahdino with lathi, Javed with Lathi, Saleem with Spade, Samoon with Gun, Mujahid Hussain with Repeater, Zahid Hussain with Pistol, Hashim with hatchet, and three unknown persons having lathies and gun. On the instigation of accused Iqbal, accused Qasim caught hold of his son Irfan, whereas, present applicant/accused Riaz Khokhar caused backside hatchet blow to him on his head; accused Javed and Qasim caused blows to complainant on back and head; accused having lathies also caused blows to PW Hussain Bux; accused Iqbal also caused lathi blow to Irfan on his head and other parts of body; thereafter all the accused having weapons made aerial firing, which attracted the co-villagers and then accused fled-away while issuing threats. Thereafter, such FIR was registered, as stated above.

3. The applicant on having been refused pre-arrest bail by the Court of learned Additional Sessions Judge (Hudood), Sukkur vide order dated 29.12.2020 hence seeks the same from this Court by way of instant bail application.

4. It is contended by learned counsel for the applicant/accused that the applicant/accused being innocent has been involved in this case falsely by the complainant party due to enmity over the landed property and such fact is admitted in the FIR; that there is delay of more than 18 days in lodgment of the FIR, for which no plausible explanation has been furnished by the complainant; that there is no independent eyewitnesses of the incident; that the brother of the present applicant has also lodged FIR No.140/2020 at Police Station

Salehpat, as the present complainant party attacked upon the house of the applicant and have caused injuries to the ladies; that there is *malafide* on the part of the complainant to involve the present applicant in a false case; that the offence does not come within the prohibitory clause of Sub-Section (2) of Section 497 Cr.P.C. He lastly contended that the applicant/accused has made-out a case for grant of pre-arrest bail on the point of further enquiry, therefore, the interim pre-arrest bail granted to the applicant/accused may be confirmed on same terms and conditions.

5. Learned Additional PG for the State and learned counsel for the complainant opposed for grant of bail to the applicant/accused by contending that the delay if any happened in lodgment of the FIR has been plausibly explained by the complainant; that the applicant/accused has actively participated in the commission of the offence by causing backside hatchet blow to PW / injured Irfan; that the offence with which the applicant/accused has been charged is punishable upto 10 years; that the applicant/accused has failed to point out any malafides for false implication in the present case. Learned counsel for complainant in support of contention, has relied upon ***Mazhar Khan and another v. The State (2018 S.L.J 1394)*** ***[Hyderabad]***.

6. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant, learned Additional PG for the State and perused the record. The FIR of the incident has been lodged with delay of more than 18 days and such delay having not

been explained plausibly by the complainant could not be ruled-out, which appears to be significant. The allegation against the applicant in the commission of offence is that he has caused backside hatchet blow to the injured Irfan, which has been challenged before the Medical Board and it is yet to be determined either the injury sustained by the injured Irfan falls within the prohibitory clause of Sub-Section (2) of Section 497 Cr.P.C or not. The injured Irfan as well as Hussain Bux are the son and nephew of the complainant being closely related, inter se, therefore, in absence of the independent evidence, their version at this stage cannot be believed to be true. In these circumstances, the applicant/accused is found entitled to grant of pre-arrest bail on the point of further inquiry. Consequently, the interim pre-arrest bail earlier granted to the applicant/accused vide dated 05.01.2021 is hereby confirmed on same terms and conditions. The applicant/accused is directed to regularly attend the trial Court till final disposal of the case. There is no cavil to the proposition laid down in the case-law relied upon by learned counsel for the complainant, but it has no relevancy to the facts and circumstances of the case in hand. The observations made herein above are tentative in nature and will prejudice the case of either party at the trial.

7. The instant bail application is disposed of accordingly.

Judge