

(62)

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Crl. Bail Appln. No.S-246 of 2021

Date _____ Order with signature of Hon'ble Judge _____

1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Amanullah Luhur, advocate for the applicants, along with applicants.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Mr. Abdul Rehman A. Bhutto, advocate for the complainant.

Date of Hearing : 06.09.2021.
Date of decision : 06.09.2021.

ORDER

Omar Sial, J.- The applicants, Sikandar Solangi, Ayaz Solangi, Aamir Machhi and Imdad Bhaiyo have all sought pre-arrest bail in FIR No.13 of 2021 registered under sections 435, 427 and 34, P.P.C. at the Thariri Mohabat police station. Earlier, their application seeking bail was dismissed by the learned Additional Sessions Judge on 24.05.2021.

2. Background to the case is that the aforementioned FIR was registered on 10.04.2021, on the complaint of Shaman Ali Dahar reporting an incident which had occurred two days ago i.e. on 08.04.2021. He recorded in the FIR that he worked on the land of one Sajid Ali and had reaped the wheat crop and collected the same in a heap on the land. At 9.30 p.m. on 08.04.2021, he along with his two relatives went to see the wheat. They saw 4 person(s) standing with weapons next to the wheat. All 4 persons took out match boxes from their pockets, struck the match sticks and set the wheat on fire. Many villagers came out when the fire erupted. However, all of them, went away when they saw that the 4 persons were armed. The accused then left the premises.

3. I have heard the learned counsel for the Applicants as well as the Complainant and the learned Additional Prosecutor General and with their assistance I have gone through the record. My observations and findings are as follows.

4. Prima facie an unusual and somewhat unbelievable story has been narrated by the complainant. Apart from the fact that the police was unable to record the statement of even one person out of the many who had come to witness the fire, it appears that the owner of the land has also not recorded his statement; even though he would be the person most impacted by the incident. At the moment, the explanation given by the complainant for not lodging a timely FIR i.e. that the land owner had gone out of the village for work and it was only after he had returned that he instructed the complainant to lodge the FIR, also seems odd at this preliminary stage keeping in view the incident and the fact that cell phones are easily available. All these issues will have to be decided by the learned trial court after evidence is led. At this preliminary stage, however, *mala fide* on the part of the complainant as well as deliberations and consultations being done prior to the lodging of the FIR cannot conclusively be ruled out.

5. An offence under section 427, PPC carries a potential sentence of two years and is a bailable offence. Section 435, PPC carries a potential sentence of two to seven years and is a non-bailable offence (though I notice that most texts of the Cr.P.C. are still listing it as a bailable offence). Be that as it may, the offence falls within the non-prohibitory clause of section 497 Cr.P.C. There appear to be no extraordinary or exceptional circumstances which would merit denying the applicants bail. Accordingly, the interim pre-arrest bail granted to the applicants on 03.06.2021 is confirmed on same terms and conditions.


JUDGE