

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Application No. S- 588 of 2023
Crl. Bail Application No. S- 624 of 2023
Crl. Bail Application No. S- 589 of 2023

Applicants
in Cr.B.A. No.S-588/23 : Rashid Ali & Saeed Ahmed Solangi (on bail).

Applicants
in Cr.B.A. No.S-624/23 : Imtiaz Ali @ Tino & Imdad Solangi (on bail).

Applicants
in Cr.B.A. No.S-589/23 : Suhail Ahmed & Mujahid Ali Solangi

Mr. Azizullah M. Buriro, advocate for the
Applicants in all three matters.

State : Through Mr. Ali Anwar Kandho, Additional
Prosecutor General.

Complainant
(Imtiaz Ali Hingoro) : Through Mr. Sher Ali Chandio, Advocate.

Date of hearing : 04.12.2023.

Date of Order : 04.12.2023.

O R D E R.

Muhammad Saleem Jessar, J.:- These three bail applications having been filed in Crime No.83/2023, registered at Police Station Radhan Station, District Dadu, are inter connected; hence, same are being decided by this common order.

2. Applicants Rashid Ali, Saeed Ahmed, Imtiaz Ali alias Tino and Imdad, all by caste Solangi, seek their admission on pre-arrest bail, whereas applicants Suhail Ahmed and Mujahid Ali, both by caste Solangi, seek their release on bail. Pre-arrest bail applications of the applicants Rashid Ali, Saeed Ahmed, Imtiaz @ Tino and Imdad were rejected by the learned Additional Sessions Judge-I, Mehar, vide separate orders dated 26.09.2023 and 24.10.2023 respectively; whereas post arrest bail application of applicants Suhail Ahmed and Mujahid Ali was also rejected by the same Court vide order dated 26.09.2023.



3. According to the case of prosecution, on 12.09.2023, at about 8.00 p.m. time, the applicants/accused being armed with cudgel, pistol, hatchets, repeater and gun etc, emerged at the shop of complainant in the agricultural land situated in Hingora Mohalla, Radhan town, damaged the articles of shop, tried to rob cash from the shop and on resistance offered by complainant, caused injuries to P.Ws Zeeshan Ali, Khadim Mumtaz and also robbed cash Rs.40,000/- from the shelf of shop and also mobile phone of complainant; and then decamped. Hence, such FIR was lodged by complainant on the same day.

4. Learned counsel for the applicants submits that the role attributed to applicant Rashid is that he caused pistol butt blow to P.W Khadim which landed at his back and said injury has been opined by the Medico-Legal Officer as other hurt punishable under Section 337-L2, PPC; whereas, applicant Saeed Ahmed has been assigned role of causing sharp side hatchet blow to P.W Zeeshan, hitting on his left ear, which injury has been opined by the Medico-Legal Officer to be punishable under Section 337-A(i) PPC. According to learned Counsel, applicants Sohail and Mujahid have been assigned role of causing sharp side hatchet blows to P.W Mumtaz Ali on his left ear and such injuries have been declared to be punishable under Section 337-A(i), PPC. As far applicant Imtiaz Ali @ Tino is concerned, he is alleged to have robbed cash Rs 40,000/- and mobile phone from the complainant; besides no role has been attributed against applicant Imdad. Learned Counsel further submits that co-accused Abdul Khalid, Jan Mohammad and Bakhshian have been granted pre-arrest bail by the trial Court and the case of present applicants is at par with them, therefore, they are also entitled to same concession on the principle of consistency. As far Section 397 PPC is concerned, learned counsel submits that one Anwar Ali Hingoro, who is posted as WHC at P.S Radhan, happens to be cousin of complainant Mumtaz Ali, who had wrongly and malafide added Section 397 PPC in this case; however, during investigation the applicants had moved complaint to SSP Dadu against said WHC, whereafter the I.O deleted Section 397, PPC; besides said WHC was transferred from P.S Radhan Station; however, at the time of submission of challan Section 397, PPC was again added/inserted on the directions of Magistrate having jurisdiction, who did not concur with the police opinion. Learned counsel submits that case against the applicants requires further enquiry. He, therefore, prays for confirmation of interim pre-arrest bail of applicants Rashid Ali, Saeed Ahmed, Imtiaz Ali alias Tino and Imdad and for release of applicants Sohail Ahmed and Mujahid Ali on post arrest bail. In support of his contentions, he places reliance upon the cases reported as *Khadim Hussain v. The State (1983 SCMR 124)*, *Muhammad Fazal @ Godi v. The State (1979 SCMR 9)* and *Mohammad Daud and another v. The State and another (2008 SCMR 173)*.

5. Learned Addl. P.G, appearing for the State, opposes the bail applications, on the ground that applicants are nominated in the FIR with specific role of causing injuries as well as snatching belongings from the complainant, therefore, they are not entitled for bail. He, however, could not controvert the fact that the injuries allegedly attributed to the applicants have been declared to be either bailable or carrying three years punishment and thus do not exceed the limit of prohibitory clause of Section 497, Cr.PC. He further submits that though Section 397, PPC was deleted during investigation, but same was again added by the Magistrate concerned.

6. Process issued against complainant has been returned served by ASI Manzoor Ali of P.S Radhan and Mr. Sher Ali Chandio advocate files Vakalatnama on behalf of complainant in Cr. Bail Appln No.S- 624 of 2023, which is taken on record. Mr. Sher Ali Chandio, learned advocate for the complainant, opposes the bail applications and submits that the applicants are involved in street crime, which is increasing day-by-day and the applicants being notorious of the area are not entitled for concession of bail. He further submits that applicant Imtiaz Ali @ Tino is also involved in Crime No.5/2023 of P.S Thariri Mohabat, under Sections 324, 353, r/w Section 401, PPC. In support of his contentions, he places reliance upon the cases reported as *Mohammad Ameen v. The State (2004 P.Cr.L.J 632)*, *Mohammad Saleem v. The State (2018 P.Cr.L.J Note 182)* and *Adnan alias 13-D v. The State (2019 YLR 47)*. He however submits that none of the applicants/accused has been convicted in any case.

7. Heard arguments and perused the record.

8. No doubt, the applicants are nominated in the FIR and roles of causing blows/injuries to injured persons are also attributed to applicants Rashid Ali, Saeed Ahmed, Suhail Ahmed and Mujahid Ali, nevertheless the injuries so caused by them have been declared to be either bailable or carrying three years punishment, which does not exceed the limits of prohibition contained in Section 497, Cr.P.C. So far applicant Imtiaz Ali @ Tino is concerned, allegation against him though is of committing robbery of cash Rs.40,000/- and mobile phone from the complainant; however, it is also an admitted position on record that at the time of submission of challan Section 397, PPC was deleted and it was again added only on the directions of Magistrate having jurisdiction at the time of submission of challan. Applicant Imdad is not assigned any role in the commission of alleged offence. The case has already been challaned and is pending trial before the Court of 1st Additional Sessions Judge, Mehar. Co-accused Abdul Khaliq, Jan Mohammad and Bakhshan have already been granted pre-arrest bail by the trial Court, as such, the present applicants also

5

deserve same concession on the principle of consistency. In view of the fact that during investigation Section 397, PPC was deleted by the police and it was added only on the directions of concerned Magistrate, the case against the applicants requires further enquiry as envisaged under sub-section (2) to Section 497, Cr.P.C.

9. For the forgoing reasons, all these three bail applications are hereby allowed. Resultantly, interim bail already granted to the applicants Rashid Ali, Saeed Ahmed, Imtiaz Ali *alias* Tino and Imdad vide orders dated 16.10.2023 and 26.10.2023 respectively, is hereby confirmed on same terms and conditions; whereas applicants Sohail Ahmed and Mujahid Ali are directed to be released on bail subject to their furnishing solvent surety in the sum of Rs.50,000/= each and P.R Bonds in the like amount to the satisfaction of trial Court.

JUDGE

Qazi Tahir/*