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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Application No. S- 724 of 2023

Applicants

: Waheed & Deedar Ali, both by caste Solangi present (on bail), *through* Mr. Irfan Badar Abbasi, Advocate.

State

: *Through* Mr. Ali Anwar Kandhro, Additional Prosecutor General.

**Complainant
(Karamullah)**

: Present in person.

Crl. Bail Application No. S- 758 of 2023

Applicants

: Asad & Mithal @ Muhammad, both by caste Solangi, *through* Mr. Irfan Badar Abbasi, Advocate.

State

: *Through* Mr. Ali Anwar Kandhro, Additional Prosecutor General.

**Complainant
(Karamullah)**

: Present in person.

Date of hearing : 15.02.2024.

Date of Order : 15.02.2024.

O R D E R.

Muhammad Saleem Jessar, J.- These two bail applications having been filed in Crime No.116/2023, registered at Police Station Radhan Station, District Dadu, are inter connected; hence, same are being decided by this common order.

2. Applicants Waheed and Deedar Ali, both sons of Bahadur Solangi, seek their admission on pre-arrest bail, whereas applicants Asad son of Waheed *alias* Imamuddin and Mithal *alias* Muhammad son of Bahadur Solangi, seek their release on post arrest bail. Pre-arrest bail applications of applicants Waheed, Deedar was rejected by the learned II-Additional Sessions Judge, Mehar, vide order dated 30.11.2023; whereas post arrest bail application of

applicants Asad and Mithal *alias* Muhammad was also rejected by the same Court by a separate order dated 30.11.2023.

3. According to the case of prosecution, on 10.11.2023, at about 6.00 p.m., the applicants/accused being armed with gun, hatchet and cudgels etc., after disgracing the complainant party, attacked upon them and on the instigation of applicant Waheed, applicant Mithal inflicted lathi blows to PW Mour, applicant Deedar inflicted cudgel blows to PW Qamaruddin on his head, applicant Asad inflicted cudgel blows to PW Arz Muhammad at his hands and other parts of body, while co-accused Deedar caused cudgel blows to PW Gulzaman and then the accused persons went away. Hence, such FIR was lodged by complainant on the next day i.e. 11.11.2023.

4. Mr. Irfan Badar Abbasi advocate files Vakalatnama on behalf of the applicants Waheed and Deedar in Cr. Bail Application No.S-724/2023, taken on record. He submits that the role attributed to applicant Waheed is that he instigated others, whereas applicant Mithal is alleged to have caused hatchet injury to PW Mour on his head, which per medicolegal certificate has been declared as *Shajjah-i-Khafifah* and is punishable for two years. He next submits that except the injury sustained by PW Arz Muhammad at the hands of applicant Asad, all other injuries sustained by the injured PWs are simple in nature. Per learned Counsel, the injury on the person of PW Arz Muhammad has been declared as *Jurh Ghayr Jaifah Munaqqilah* falling under Section 337-F(iii), PPC carries punishment of 07 years; as such, the offence does not fall within the prohibitory clause of Section 497, Cr.P.C. He, therefore, prays that the ad-interim pre-arrest bail already granted to applicants Waheed and Deedar Ali may be confirmed; while applicants Asad and Mithal *alias* Muhammad may be released on bail. In support of his contentions, he places reliance upon the cases reported as *Khalil Ahmed Soomro & others v. The State* (PLD 2017 Supreme Court 730) and *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733).

5. Process issued against complainant has been returned duly served and complainant Karamullah present in person submits that he being poor is unable to engage his Counsel; however, expresses his trust upon the learned Addl. P.G.

6. Learned Addl. P.G, appearing for the State, does not oppose the bail applications, mainly on the ground that the offence does not fall within prohibitory clause of Section 497, Cr.P.C.

7. Heard arguments and perused the record.

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8. No doubt, the applicants are nominated in the FIR and roles of causing blows/injuries to injured persons are also attributed to applicants Asad, Mithal and Deedar Ali; whereas role of instigation is assigned to applicant Waheed, nevertheless the injuries so caused by them, except injury of applicant Asad, have been declared to be either bailable or carrying two years' punishment, which does not exceed the limits of prohibition as contained under Section 497, Cr.P.C. So far applicant Asad is concerned, the injury attributed to him on the person of injured PW Arz Muhammad has been declared as *Jurh Ghayr Jaifah Munaqqilah*, which carries punishment of 07 years and does not attract the prohibition contained in Section 497, Cr.P.C. The case has already been challaned and in view of ill-will between the parties, which had occurred prior to the alleged incident, 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, in my view, the applicants have made out their case for grant of bail. Consequently, both these bail applications are hereby allowed. Resultantly, interim bail already granted to the applicants Waheed and Deedar Ali vide order dated 06.12.2023 is hereby confirmed on same terms and conditions; whereas applicants Asad and Mithal *alias* Muhammad 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/*