

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Bail application No.S-1085 of 2018

Chanessar Bheel Applicant

Vs.

The State Respondent

Dated of hearing: **15.02.2019**

Mr. Bhagwandas Bheel Advocate for the applicant/accused
Mr. Omparkash Advocate for the complainant
Mr. Shahid Shaikh A.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant Criminal Bail Application, the applicant namely Chanesar is seeking post arrest bail in Crime No.62 of 2018 registered under section 506(ii), 337-H(ii), 147, 148, 149, 114, 504, 337-A(i) & 337-0F(i) PPC at police station Chhachhro District Tharparkar.

2. Precise facts of the prosecution case are that on 13.10.2018 at 1300 hours, the complainant, along with his family members were busy in harvesting the crop from their agricultural land at that time, accused Poonjo having *Lathi*, (2) Togo having *Lathi* (3) Chanesar armed with hatchet, (4) Hameer s/o Jalal armed with hatchet, (5) Roopo having *Lathi*, (6) Pehlaj, (7) Jogo, (8) Khano, (9) Hameer s/o Hakeem all armed with *Lathis*, (10) Usman and (11) Khamiso armed with gun, came there and directed them to leave the land, on refusal, Poonjo infuriated and instigated the applicant, who caused hatchet blow on his head, while other co-accused assaulted other family members/witnesses with *Lathis* and hatchets, whereas co-accused Khamiso resorted aerial firing. Per complainant all the assailants then went away by extending threats. The complainant, being aggrieved by the aforesaid acts of accused person, came at police station and lodged the FIR against the

assailants including the present applicant. Investigating Officer recorded statements of prosecution witnesses arrested and interrogated the applicant; got conducted medical examination of injured witnesses and obtained its report. Finally, Investigating Officer submitted Charge Sheet on 27.10.2018 before the learned trial court. Applicant filed Cr. Bail Application No. 32/2018 before the learned trial court, which was dismissed vide order dated 19.10.2018, thereafter he filed Bail application No.210/2018 before the learned District & Sessions Judge Tharparkar at Mithi which too was dismissed vide order dated 17.11.2018, thereafter the present bail application has been filed, whereby the applicant/accused impugned the order dated 17.11.2018 passed by the learned District & Sessions Judge Tharparkar at Mithi.

3. Mr. Bhagwandas Bheel Learned counsel for applicant has contended that all the nine co-accused persons have been granted bail in this case by the trial court while bail was declined to the applicant therefore the rule of consistency is applicable in the case of applicant; that offences applied by the prosecution in stricto sensu do not fall with the prohibitory clause 497(1) Cr.P.C, therefore, the applicant is entitled for the concession of bail; that Applicant has no previous criminal record and entire case requires further enquiry into the guilt of Applicant. He further contended that this is a case of two version; that the complainant party attacked upon accused party and both the parties sustained grievous injuries but police did not lodge the FIR of accused party. He further argued that the complainant party assaulted the applicant/accused and co-accused Roopo son of Hakeem, when they were harvesting crop in Survey No.85 and caused injuries to applicant/accused and co-accused Roopo and such medical certificate was issued by the concerned doctor, but the complainant party malafidely suppressed this fact in the instant FIR. He further argued that since the police did not lodge the FIR of accused

party, therefore a Direct Complaint was filed against the complainant party for the same incident and the learned Magistrate has taken the cognizance. He prayed for grant of bail to applicant/accused. In support of his contention, reliance has been placed upon the case of Muhamamd Dawood & another Vs. The State & another [2008 SCMR 173], Asghar Ali Vs. The State [2009 P.Cr.L.J 1060], Muhammad Aamir Vs. The State [2010 P.Cr.L.J 512], Attar Vs. The State [2004 MLD 1892], Hamza Ali Hamza and others Vs. The State [2010 SCMR 1219], Abdul Rashid Vs. The State [2008 P.Cr.L.J 695], Liaquat Ali Vs The State & another [2010 MLD 250], Gul Muhammad & Others Vs. The State & Others [2010 P.Cr.L.J 340], Naimat Khan Vs. The State [2010 P.Cr.L.J 964].

4. In rebuttal, Mr. Omparkash learned counsel for the complainant has contended that accused party caused grievous injuries to the complainant on his head which is vital part of the body; therefore, the applicant is not entitled for the concession of bail; that offences are not bailable; however he admitted the fact that co-accused have been granted bail by the learned trial court except present applicant/accused. He further contended that the prosecution has collected sufficient incriminating evidence against the Applicant and if the bail is granted the applicant will continue to commit similar criminal activities, causing harms to the family of the complainant. He next contended that Prosecution case is fully supported by the statements of the witnesses therefore; Applicant is not entitled to the concession of bail; that the prosecution witnesses have no enmity with the Applicant which could suggest false implication of the Applicant; that the case of co-accused is distinguishable from the case of applicant, therefore, he cannot rely upon the bail granted to co-accused, therefore rule of consistency is not applicable in the case of applicant; that specific role of causing injuries to complainant is alleged in the FIR whereas there are general allegations against the co-accused

persons who have been granted bail as such rule of consistency is not applicable to the case of applicant/accused. He, therefore, vehemently opposed the grant of bail.

5. Mr. Shahid Ahmed Shaikh, Learned Deputy Prosecutor General for the State opposed the grant of bail on the ground that severe injuries caused to the complainant and the applicant/accused is named in the FIR with specific role of causing injuries and as per the tentative assessment the applicant/accused is not entitled for grant of bail.

6. I have heard learned counsel for the Applicant, learned DPG for the State, learned counsel for the Complainant and perused the material available on record as well as case law cited at the Bar.

7. I have noticed that the applicant filed Cr. Bail Application No.210/2018 before the learned District & Sessions Judge Tharparkar at Mithi which too was dismissed vide order dated 17.11.2018. The findings of learned Court below are based on the premise that the applicant is nominated in the subject crime with specific role of causing hatchet injuries to the complainant Samyo on his head.

8. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Honorable Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding bail application this court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against accused, nature and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State [2010 SCMR 1221].

9. Keeping in view the above guidelines, let me now enter into the question as to whether there is a situation warranting for allowing bail to the applicant, taking into consideration the rival contentions and the facts and circumstances presented in the case in hand. On a careful perusal of the record, the following is the tentative assessment of the case:

- i. Incident took place on 13.10.2018 and Complainant party received injuries falling within the ambit of Section 337-A (i), 337-F (i) & 337-H(ii) PPC.
- ii. As per deposition of Dr. Suresh in his statement under Section 202 Cr.PC, he disclosed 04 injuries received by Applicant party.
- iii. Counter version arising from the same incident, one given by the complainant in the FIR and other given by opposite party in the shape of private complaint No.08/2018 filed by the Applicant party is available on record and both the matters are under adjudication.
- iv. Land dispute between the parties in the shape of revenue petition under Section 164 of Land Revenue Act, 1967 is available on record.
- v. Mobarak Ali, SHO, PS Chachro has deposed in his statement under Section 202 Cr.PC that the Applicant party also sustained injuries while no cognizable offence was committed by the complainant party and no FIR was registered.

10. Upon perusal of record it appears that both the parties lodged cases against each other, it would appear that a free fight ensued between them in which hatchets and *Lathis* were used. Consequently, both the parties received injuries. Though Samyo, the complainant had been grievously injured and perhaps the other two persons from the applicant side had received minor injuries. Prima facie it is difficult to ascertain at this stage as to who was the aggressor. Consequently, it would be unjust to refuse bail to the applicant particularly, when all the other co-accused are on bail. The law in this respect is very clear, therefore, the case of applicant is covered under Section 497(ii), Cr.PC.

11. As per record co-accused in the same crime have been allowed bail, therefore, the principle of consistency is applicable in the present case for the simple reason that both the parties have received injuries. Prima facie, the case of applicant is at par with other co-accused who had already been granted bail, therefore, the concession of bail to the applicant cannot be denied at this stage.

12. In view of the above facts and circumstances, I am of the opinion that Applicant/Accused has made out a case for grant of bail. Therefore, Applicant Chanessar son of Hakeem is granted post arrest Bail subject to furnishing solvent surety in the sum of 200,000/- (Rupees two lac) and P.R. bond in the like amount to the satisfaction of learned Trial Court. However, if the applicant misuses the concession of bail, the learned trial Court would be at liberty to proceed against the applicant as per law without referring the matter to this Court.

13. The above findings are tentative in nature which shall not prejudice the case of either party during trial.

14. Foregoing are the reasons of short order dated 15.02.2019.

JUDGE

A.Rasheed