

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**CrI. B.A. No. S - 237 of 2019.**

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Date

Order with signature of Judge

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For Hearing of Bail Application.

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**08.07.2019.**

Mr. Najeebullah Jalbani Advocate alongwith applicants.  
Mr. Riaz Ali Shaikh Advocate alongwith complainant.  
Mr. Zulifqar Ali Jatoi Addl.P.G.

**ORDER**

**Arshad Hussain Khan, J-** Applicants Atta Muhammad, Azeem, Sarfraz Ahmed and Nazeer Ahmed have filed this application under Section 498 Cr.P.C seeking pre-arrest bail in Crime No.69/2019 of Police Station, Kandiaro registered for offence under Sections 324, 337-H(ii), 337-A(i), 337-A(ii), 337-F(i), 147, 148, 149, PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that complainant Lal Bux Rind lodged F.I.R on 13.4.2019 at 2300 hours alleging therein that he has owned shops situated in Kandiaro Town and residential house in Shahbaz Colony. The house was subsequently rented out to the brother of Atta Muhammad as he was in need of the same. However, later on the when the complainant asked the brother of Atta Muhammad to vacate the house as the same was required by him for personal need the accused persons were annoyed. It was further alleged that on the day of incident complainant, his son Parvez, Zaheeruddin and nephew Wazir Rind were available at their Bakery, when at about 6-45 pm all of sudden accused Atta Muhammad, Azeem, Abdul Rehman, Sarfaraz, Nazeer, Gul Hassan and Abdul Sattar duly armed with Pistols, Guns, Iron Rods and *Dandas* came there. Upon reaching the site of occurrence, they used objectionable language and shouted that owing to the dispute of house today they will not spare the complainant party and will commit their murder and by saying so accused Atta Muhammad and Abdul Sattar made straight fires upon

complainant party with intention to commit their murder but they saved themselves by taking shelter in the Bakery. Whereas accused Azeem and Abdul Rehman caused injury to complainant's nephew-Wazir Ali, through Iron Rod with intent to commit his murder, Wazir Ali upon receiving injuries fell down, accused Atta Muhammad and Abdul Sattar caused blow through butt of weapons to complainant's son Parvez on his head and on left hand due to which he became unconscious and fell down on the ground, accused Gul Hassan and Sarfraz caused injury through butt of Pistols and Danda respectively to the complainant's son Zaheeruddin on his head, arm and leg who also fell down on the ground while accused Sudheer and others caused injuries to the complainant on different parts of his body. At the outcry of complainant and sound of firing, neighborhood reached at the site and rescued the complainant party. Thereafter all the accused persons went away on their motorcycles while making aerial firing; hence the complainant lodged F.I.R against the accused persons as stated above.

3. From the perusal of the record, it appears that applicants/accused approached learned Additional Sessions Judge, Kandiaro for pre-arrest bail but application was declined by learned Court by order dated 22.04.2019. Thereafter, the applicants/accused have approached this Court for similar relief.

4. Learned counsel for the applicants during the course of arguments has contended that the applicants are innocent and they have been falsely implicated in the case by the complainant with malafide intentions and ulterior motives. Further contended that the parties inter se are uncle and cousins, and the instant FIR has been lodged owing to the dispute in respect of immovable property for which the complaint under section 3 & 4 of Illegal Dispossession Act 2005 is pending before the Court of learned 3<sup>rd</sup> Additional Sessions Judge Naushahro Feroze. Further argued that all the Sections mentioned in the FIR are bailable in nature except section 324 PPC which section does not apply to the present case as there is no firearm injury to any of the alleged injured. It is also argued that there is a delay of six hours in lodging the FIR which reflects that the complainant concocted the story and has arranged false medical certificate. It is also argued that the learned Court of III<sup>rd</sup> Additional Sessions Judge, Naushahro Feroze granted post arrest bail to another set of accused (co-accused) in the subject crime. It is also argued that grant of bail does not mean that discharge of person from accusation, but only the custody is to be shifted from the jail into the hands of surety as under the law there is no provision for compensation of accused if after termination of trial he

would be declared as innocent. Learned counsel in support of his stance in the case has relied upon the cases of *Khalil Ahmed Soomro and others v. The state* (PLD 2017 SC 730), *Syed Nazar Ali Shah v. The State* (2016YLR 1899) and *Badaruddin v. The State* (2010 MLD 1052)

5. Conversely, the learned Addl.P.G assisted by the learned counsel for the complainant vehemently opposed the arguments so advanced by the counsel for the applicants and contended that the alleged offence is heinous one which caused injuries to the complaint party and the applicants/accused were nominated in the promptly lodged FIR with specific role mentioned in the said FIR, thus applicants/accused are not entitled for confirmation of their ad-interim bail.

6. I have heard learned Counsel for the parties and also perused the record as well as the case law cited at the Bar.

7. From the perusal of the FIR it appears that except section 324 PPC, all the sections mentioned in the FIR areailable. Insofar as the section 324 PPC (Qatl-e-Amd) is concerned, it was alleged that applicants/accused came at the site of occurrence, inter alia, with fire arm weapons with the intent to commit murder however, none of the injured persons received any fire arm injury although they were at the mercy of the accused persons. The said act of the accused persons prima facie reflects that they had no intention to commit murder of injured or the complaint which controverts the applicability of section 324 PPC. The record also reflects that the parties, inter se, are related to each other as uncle and nephew and further a case under Illegal Dispossession Act is also pending adjudication between the parties. In these circumstances, prima facie, the possibility of mala fide and ulterior motives on the part of the complainant in lodging the instant FIR against the applicants/accused cannot be ruled out and as such the same requires further probe. Moreover, the other set of accused persons nominated in the subject crime having same allegation on them have been granted bail after arrest by the learned trial Court. Record also shows that Interim pre-arrest bail was granted to applicants/accused by this Court on 24.04.2019. Thereafter, applicants/accused are appearing before this Court on each and every date of hearing so before the trial Court. Reliance placed by the learned counsel supports case of the applicants.

8. For what has been stated above, I am of the considered view that applicants/accused have made out the case for grant of pre-arrest bail. Consequently, interim pre-arrest bail already granted to applicants/accused is confirmed on the same terms and conditions. It may also be observed that in event if the applicants misuse the concession of bail, the trial Court would be at liberty to initiate proceedings against them in accordance with law without any reference to this Court.

9. Needless to say, the observations made here-in-above are tentative in nature and only for the purpose of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the Trial Court in reaching its decision on merits of the case.

JUDGE

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