

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**CrI. B.A. No. S - 337 of 2019.**

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Date

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Order with signature of Judge

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For Hearing of Bail Application.

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**22.07.2019.**

Mr. Ghulam Hussain Abbasi Advocate alongwith applicant.  
Mr. Abdul Rehman Kolachi D.P.G.

**ORDER**

**Arshad Hussain Khan, J-** Applicant Muhammad Ameen Hattar has filed this application under Section 498 Cr.P.C seeking pre-arrest bail in Crime No.94/2019 of Police Station, Kandiaro registered for offence under Sections 337-U, 147, 148, 504, PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that complainant Mohammad Zaman lodged F.I.R on 27.5.2019 at 2300 hours alleging therein that he along with wife Mst Ghulam Fatim, his daughter Mst. Safooran Hattar and other inmates were available in their house, they heard sound in high frequency from the house of applicant on such complainant asked applicant to slow or reduce the sound of TV as they are facing trouble on which applicant and his sons annoyed. The accused/applicant Mohammad Ameen, his sons Parvez, Maroof, Sudheer alias Zubair, Shoib and Zuhaib armed with lathis entered into the house of complainant and on coming used abusive language on which complainant asked them be gentleman, the accused Mohammad Ameen caused lathi blow to Mst. Safooran which hit on her face due to which two teeth were broken while other accused caused kicks and fist blows to her. Complainant raised cries which attracted Hamzo and other co-villagers who intervened and got rescued daughter of complainant after beseeching the accused persons, thereafter all the accused persons went towards their houses. Complainant took her injured daughter Mst. Safooran Hattar at Police Station, Kandiaro, obtained letter of medical treatment of her daughter to WMO Taluka hospital Kandiaro and got

treatment; hence the complainant lodged F.I.R against the accused persons as stated above.

3. From the perusal of the record, it appears that applicant/accused approached learned Additional Sessions Judge, Kandiaro for pre-arrest bail but application was declined by learned Court by order dated 13.06.2019. Thereafter, the applicant/accused has approached this Court for similar relief.

4. Learned counsel for the applicant during the course of arguments has contended that the applicant is innocent and he has been falsely implicated in the case by the complainant with malafide intentions and ulterior motives. Further contended that the parties inter se are brothers, and the instant FIR has been lodged owing to the dispute in respect of wall. Further argued that all the Sections mentioned in the FIR are bailable in nature except section 337-U PPC which does not fall within the prohibitory clause of Section 497 Cr.P.C and it requires evidence at the time of trial. It is also argued that there is a delay of 19 days in lodging the FIR which reflects that the complainant concocted the story and has arranged false medical certificate. It is also argued that the applicant has lodged FIR bearing Crime No.82/2019 at Police Station, Kandiaro in which the complainant party has been granted pre-arrest bail while bail of present applicant has been declined. 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 *Basharat Ali and another v. The state* (1993 MLD 159), *Shoaib Mehmood Butt v. Iftikhar-ul-Haq and 3 others* (1996 SCMR 1845)

5. Conversely, the learned D.P.G vehemently opposed the arguments so advanced by the counsel for the applicant and contended that the alleged offence is heinous one which caused injuries to the daughter of complaint Mst. Safooran and her two teeth were broken and the applicant and his sons were nominated in the FIR with specific role mentioned in the said FIR, thus applicant/accused is not entitled for confirmation of 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 337-U PPC, all the sections mentioned in the FIR are bailable. Insofar as the section 337-U PPC (Itlaf-e-Uddu) is concerned, it was alleged that applicant/accused came at the site of occurrence, *inter alia*, with lathi and caused lathi blow to Mst. Safooran resultantly her two teeth were broken and bail of applicant has been declined on this ground while the other set of accused persons nominated in the subject crime who caused kicks and fist blows to complainant party have been granted bail. The punishment provided under this section shall be liable to daman which may extend to one year and it is yet to be determined at the time of trial that who caused injuries to Mst. Safooran. Learned Counsel for applicant has drawn attention to FIR No.82/2019 U/s 337A(iii)F(i), 148, 149 PPC lodged by applicant against complainant party of this case. 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 applicant/accused cannot be ruled out and as such the same requires further probe. The offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Record also shows that Interim pre-arrest bail was granted to applicant/accused by this Court on 17.06.2019. Thereafter, applicant/accused is appearing before this Court on each and every date of hearing so before the trial Court. Record also reflects that charge has been framed and matter is at the stage of evidence and as such putting the applicant behind the bar would not serve any useful purpose. Reliance placed by the learned counsel supports case of the applicant.

8. For what has been stated above, I am of the considered view that applicant/accused seem to have made out a case for the grant of pre-arrest bail. Consequently, interim pre-arrest bail already granted to applicant/accused is confirmed on the same terms and conditions. It may also be observed that in event if the applicant misuse the concession of bail, the trial Court would be at liberty to initiate proceedings against him 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