

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 811 of 2020

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

10.11.2020

Applicant is present on interim pre-arrest bail.

Ms. Rameshan Oad, A.P.G.

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**ORDER**

**Muhammad Saleem Jessar, J.**-Through this application, the applicant seeks his admission on pre-arrest bail in Crime No.46 of 2020, registered at Police Station Saeedabad, under sections 337-A(i), 337-F(i), 337-F(vi), 147, 148, 149 PPC. Earlier, bail plea preferred by him before the trial Court has been declined by means of order dated 21.07.2020.

2. The crux of prosecution case as unfolded in the F.I.R. lodged by complainant Wazeer Ali on 20.05.2020 at 1200 hours at P.S Saeedabad, are that on 29.04.2020 at 1100 hours accused everyone Ghulam Shah armed with lathi, Sadam (present applicant) with hatchet, Ghulam Shabir with dagger, Munir with pistol, Abdullah with lathi and Irfan with lathi came at the land of complainant and used abusive language and accused / applicant Sadam caused straight hatchet blow to complainant on dorsal aspect of left hand and other blow at left arm under the elbow while other accused caused lathi and butt blows of pistol to complainant on his head and other parts of body thereafter all accused fled away.

3. Mr. Asif Ali Talpur Advocate, holding brief on behalf of Mr. Badal Gahoti, Advocate for applicant, who is stated to be unwell, submits that offence with which applicant is charged does not exceed the limits of prohibition as contained under section 497(i) Cr.P.C; that the role alleged against applicant is that he caused hatchet blows to injured / complainant Wazeer Ali, which landed on his wrist, left arm and left hand; that injuries allegedly sustained by injured / complainant have been declared by Medico-Legal Officer to be falling under sections 337-F(i) and 337-F(vi) PPC; that punishment as provided by law for section 337-F(vi) PPC is 07 years; therefore, it does not fall within prohibitory clause of section 497 Cr.P.C. He further submits that applicant after grant of interim pre-arrest bail by this Court

has not misused it; hence, prays that while granting instant application, interim pre-arrest bail earlier granted to him by this Court vide order dated 24.08.2020 may be confirmed.

4. Learned A.P.G appearing for State opposes bail application on the ground that applicant has been assigned specific role of causing sharp side hatchet injuries to injured / complainant Wazeer Ali; however, she could not controvert the factum of delay caused in lodgment of F.I.R. which is for about 22 days.

5. Heard arguments and perused record.

6. As is evident from record, the incident is said to have taken place on 29.04.2020 at 1100 hours, whereas report thereof was lodged at Police Station Saeedabad on 20.05.2020 at 1200 hours with a delay of 22 days though distance between place of incident as well as police station is only 10/12 kilometers and no plausible explanation has been furnished by prosecution for such an inordinate delay. The delay in criminal cases has always been deprecated by the superior Courts and has been held fatal for the prosecution. Reference in this context can be had from the case of **Ayub Masih v. The State** (PLD 2002 SC 1048) and case of **Ayaz Ali and 2 others v. The State** (2000 PCr.LJ 1031).

7. As far as role allegedly played by applicant in commission of offence is concerned, he alongwith others had caused multiple injuries to injured / complainant and the injuries allegedly sustained by injured / complainant have been declared by the Medico-Legal Officer to be punishable under section 337-F(vi) PPC, which carries maximum punishment upto 07 years and does not exceed the limits of prohibition clause of section 497(i) Cr.P.C; besides, the injuries sustained by injured are on non-vital parts of his body, therefore, have not been declared or opined by the Medico-Legal Officer to be fatal / detrimental for the health as well as life of injured / complainant. Therefore, in such a situation, the allegation leveled by prosecution against present applicant requires further probe. In this context reliance can be had from the cases of **Master Dur Muhammad and 2 others v. The State** (1994 PCr.LJ 1769) and **Khalil Ahmed Soomro and others v. The State** (PLD 2017 Supreme Court 730). Moreover, the injured has also sustained a simple injury on his head in terms of section 337-A(i) PPC, but said injury is attributed to co-accused who have been granted bail by the Court below.

8. In these circumstances and in view of above discussion, *prima facie*, applicant has been able to make out a good prima facie case of further inquiry within the meaning of section 497(2) Cr.P.C. Consequently, instant bail application is allowed and as a result thereof interim pre-arrest bail, earlier

granted by this Court to applicant vide order dated 24.08.2020 is hereby confirmed on same terms and conditions. However, the applicant is directed to continue his appearance before trial Court and in case of his failure to appear and / or proceed with the case, the trial Court would be competent to take legal action against him as well as his surety in accordance with law, without making any reference to this Court.

9. Needless to mention here that observations made herein above are tentative in nature and the trial Court would not be influenced upon by any of them while deciding main case on merits.

10. Copy of this order be communicated to trial Court through learned Sessions Judge, Matiari, for compliance.

JUDGE

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