

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-1251 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For hearing of main case.

15.01.2021

Mr. Nasrullah Unar, advocate along with applicant.
Ms. Sobia Bhatti, A.P.G for the State.
Complainant in person.

==

Irshad Ali Shah, J:- It is alleged that the applicant with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object have caused fists, kicks and lathi blows to complainant Ashique Ali and PW Mst. Mehar Bibi and others and then went away by insulting and threatening them of murder, for that the present case was registered against them.

2. The applicant on having been refused pre arrest bail by learned VIII-Additional Sessions Judge, Hyderabad has sought for the same from this Court by way of instant application u/s 498 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party in order to satisfy its dispute with him over passage; co-accused Shahzeb and seven others have already been admitted to bail by learned trial Court and complainant Ashique Ali now by filing his affidavit has also recorded no objection to grant of

bail to the applicant. By contending so, he sought for pre-arrest bail for the applicant on point of further enquiry and malafide.

4. Learned A.P.G. for the State who is assisted by the complainant has recorded no objection to grant of pre arrest bail to the applicant.

5. I have considered the above arguments and perused the record.

6. The FIR of the incident has been lodged with delay of about five days; such delay having not been explained plausibly could not be overlooked. Co-accused Shahzeb and seven others have already been admitted to bail by learned VIII Additional Sessions Judge, Hyderabad. Learned A.P.G for the State with assistance of the complainant have recorded no objection to grant of bail to the applicant. The parties are already disputed over passage. In these circumstances, it is rightly being contended by learned counsel for the applicant that the applicant is entitled to grant of pre-arrest bail.

7. *In case of Khalil Ahmed Soomro and others Vs. The State (PLD 2017 SC-730), the Hon'ble Apex Court has held that;*

“---Ss. 498 & 497---Constitution of Pakistan, Art. 185(3)--- Penal Code (XLV of 1860), Ss. 337-A(i), 337-F(i), 337-F(vi), 337-L(2) & 504---Shajjah-i-khafifah, ghayr-jaifah damiyah, ghayr-jaifah munaqqillah, other hurt, intentional insult with intent to provoke breach of peace---Pre-arrest bail, grant of---Mala fide of complainant---Offences with which accused persons were charged were punishable by way of imprisonment which did not fall within the prohibitory part of S. 497, Cr.P.C.--- When the accused persons were entitled to post arrest bail, their prayer for pre-arrest bail, if declined,

would be a matter of technicality alone---Accused persons were likely to be humiliated and disgraced due to their arrest at the hands of the local police---In the present case, it appeared that net had been thrown wider and the injuries sustained by the victims except one or two, had been exaggerated---Seemingly efforts had been made to show that the offences fell within such provisions of law, which were punishable with five years' or seven years' imprisonment---All said aspects, when considered combindly, constituted mala fides on part of complainant party ---Accused persons were granted pre-arrest bail accordingly”.

8. In view of above, the interim pre-arrest bail already granted to the applicant is confirmed on same terms and conditions.
9. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa.