

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-33 of 2021

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

02.02.2021

Mr. Imtiaz Ali Chanhio, advocate along with applicants.
Ms. Sobia Bhatti, A.P.G for the State.
Mr. Altaf Shahid Abro, advocate for complainant.

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Irshad Ali Shah, J:- It is alleged that the applicants with rest of the culprits after having formed an unlawful assembly and in prosecution of their common intention have caused fists kicks, lathies and back side of hatchet blows to complainant Khamiso, PWs Achar and Asghar and then went away by threatening the complainant party of murder, for that the present case was registered against him.

2. The applicants on having been refused pre arrest bail by learned Additional Sessions Judge, Khipro have 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 applicants that the applicants being innocent have been involved in this case falsely by the complainant party in order to satisfy its dispute with them over plot; the FIR has been lodged with delay of about one day; there is counter version of the incident; co-accused Sadique, Mumtaz and Mustafa have already been admitted to bail by learned trial Court and offence alleged against the applicants is not falling within the

prohibitory clause. By contending so, he sought for pre-arrest bail for the applicant on point of further enquiry and malafide. In support of his contention he relied upon case of *Sultan and 6 others vs The State (2019 YLR 204)*.

4. Learned A.P.G. for the State and learned counsel for the complainant have opposed to grant of pre arrest bail to the applicants by contending that they have actively participated in commission of incident.

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

6. The FIR of the incident has been lodged with delay of about one day; such delay could not be overlooked. The parties are said to be disputed over plot. There is counter version of the incident, which party is aggressor and which party is aggressed upon? It requires determination at trial. The offence alleged against the applicant is not falling within the prohibitory clause and co-accused Sadique, Mumtaz and Mustafa have already been admitted to bail by learned trial Court. The case has finally been challenged. The applicants have joined the trial. In these circumstances, it is rightly being contended by learned counsel for the applicants that the applicants are 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 combinidly, 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 applicants is confirmed on same terms and conditions.

9. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa.