

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-21 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection

For hearing of main case.

22.02.2021

Mr. Mian Taj Muhammad Keerio, advocate along with applicants.

Ms. Sobia Bhatti, A.P.G for the State.

Complainant Abdul Kareem in person.

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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 object caused hatchets and lathis blows to PWs Gulbahar, Muhammad Ayoub and Muhammad Azeem with intention to commit their murder and then went away by maltreating complainant Abdul Karim and misappropriating his money worth Rs.25000/-, for that the present case was registered against them.

2. The applicants on having been refused pre arrest bail by learned Sessions Judge, Mirpurkhas 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 over cattle trespass; the FIR has been lodged with delay of about three days and there is counter version of the incident. By contending so, he sought for pre-arrest bail for the applicants on point of further enquiry and

malafide. In support of his contention he has relied upon case of *Ghulam Muhammad alias Masood (2020 YLR Note 56)*.

4. Learned A.P.G. for the State, who is assisted by complainant has opposed to grant of pre arrest bail to the applicants by contending that their previous bail application has dismissed by this Court for non-prosecution.

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

6. The FIR of the incident has been lodged with delay of about three days; such delay could not be overlooked. The injury sustained by injured PW Gulbahar, which are attributed to applicants are not falling within prohibitory clause of section 497(2) Cr.P.C. Whether the injuries sustained by the injured were caused to them with intention to commit their murder? It requires determination at trial. Parties are already disputed over cattle trespass. There is counter version of the incident, which party is aggressor and which party is aggressed upon, it requires determination at trial. The case has finally been challenged. The applicants have joined the trial. Co-accused Hashim and four others have already been admitted to bail by learned trial Court. The dismissal of the earlier bail application for non-prosecution could hardly be treated as resjudicata. 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 on point of malafide.

7. In case reported as “*Khalil Ahmed Soomro and others Vs. The State*” (PLD 2017 SC-730) Hon’ble apex Court has admitted the accused to bail by making following observation;

“---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 applicants is confirmed on same terms and conditions.

9. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa.