

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-943 of 2019

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

07.10.2019.

Mr. Manzoor Ahmed Panhwar, Advocate for the Applicants.

Applicants are present on interim pre-arrest bail.

Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.
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ORDER

Zulfiqar Ali Sangi, J.-Through instant application, the Applicants seek pre-arrest bail in Crime No.68/2019, registered at Police Station Bulri Shah Karim, under sections 324, 337-A(ii), 337A-(i), 337-L(ii), 114, 504, 34 PPC. Initially, plea of pre-arrest bail preferred by the Applicants was declined by learned Additional Sessions Judge-I, Tando Muhammad Khan vide order dated 27.09.2019.

2. The facts of the prosecution case are that complainant Ansar Ahmed on 08.08.2019 at 0630 hours appeared at Police Station Bulri Shah Karim and lodged F.I.R. stating therein on 21.07.2019 he alongwith his landlord/zamindar Adam and one Umar Samoo was busy in watering the rice crop where at about 1730 hours accused Muhammad Ismail (Applicant) alongwith his two sons namely Muhammad Saleem (Applicant) and Mumtaz Ali all having hatchets in their respective hands came and said that many times he (Ismail) prohibited them (complainant party) not to do work there and leave the same but they do not listen. While saying these words accused Muhammad Ismail instigated Mumtaz and Saleem not to spare complainant party, and while saying these words Muhammad Ismail himself caused backed side hatchet injury on the left eye brow of complainant, whereas accused Mumtaz Ali caused backside hatchet on his neck and other accused also repeated backside hatchet blows and caused injuries on his different parts of body.

Complainant on receiving such injuries while crying fell down on the ground and accused persons fled away. Thereafter, P.Ws. Adam and Umar brought the injured first at P.S Bulri Shah Karim and then to hospital for treatment and after issuance of medical certificate by Doctor on 30.07.2019 complainant lodged such F.I.R.

3. Learned counsel for Applicant, *inter alia*, submits that the Applicants are innocent and have been falsely involved in this case; that there is enmity between the parties; that applicants have been involved in the present case with malafide intention; that F.I.R. was registered with delay of 17 days which suggests that such was registered after due consultation and deliberation. He contended that as per F.I.R. Applicant Muhammad Ismail instigated other co-accused for commission of alleged offence as well he himself caused injury to the complainant at his eyebrow; whereas Applicant Saleem caused backside hatchet injury to complainant; that all the sections areailable except section 337-A(ii) PPC, which is punishable for 05 years and does not fall within prohibitory clause of section 497(1) Cr.P.C; that ingredients of section 324 PPC do not attract in the circumstances, however, its applicability can only determined at trial. Lastly he prayed for confirmation of interim pre-arrest bail earlier granted to the Applicants.

4. Learned A.P.G. opposed the bail application and has contended that Applicants have committed the alleged offence and their names are transpired in the F.I.R with specific role; ocular evidence is supported by medical evidence, thus they deserve no concession, accordingly the present application for pre-arrest bail may be dismissed.

5. I have heard the parties' counsel and perused the material available on record.

6. Admittedly, there is delay of 17 days in lodging the F.I.R. which has not been explained plausibly by the complainant; final medical certificate issued by the doctor on 30.07.2019 and even then F.I.R. was registered on 08.08.2019. The injuries declared by the doctor as injury No.1 (Shajjah-i-Khafifah S. 337-A(i) PPC) punishable for Daman, and imprisonment of either description for

two years; injury No.2 (Shajjah-i-mudihah S. 337-A(ii) PPC) punishable for Qisas, or arsh, and imprisonment of either description for five years; injuries No.3 to 10 (other hurts not covered hereto-before S. 337-L(ii) PPC) punishable for Daman, or imprisonment of either description for two years or with both. Furthermore, the doctor opined that all the injuries are caused with hard and blunt substance. Even the allegations against the Applicants in F.I.R. are that they caused injuries with backside of hatchets; therefore, the ingredients of section 324 PPC are missing; the Applicants did not use the sharp side of hatchet which proves that they have no intention of committing murder of the complainant party. It is well settled principle of law that deeper appreciation of evidence is not permissible at bail stage and the material has to be assessed tentatively. While assessing the material available on record tentatively, case of the Applicants appears to be one of furt her inquiry as envisaged under section 497(2) Cr.P.C.

7. In view of above, the Applicants have successfully made out their good prima facie case for grant of pre-arrest bail. Resultantly, the application is allowed and the interim pre-arrest bail earlier granted to the applicants by this Court vide order dated 30.09.2019 is hereby confirmed on same terms and conditions.

8. Needless to mention that the observation made hereinabove are tentative in nature and will not cause any prejudice to either party at the trial.

JUDGE

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