

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-873 of 2019

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

21.10.2019.

Applicants are present in person on interim pre-arrest bail.

Mr. Shawak Rathore, D.P.G.

Mr. Masood Ahmed Laghari Advocate alongwith the complainant.

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ORDER

Muhammad Saleem Jessar, J.- Applicants Mubarak, Ali Nawaz alias Nawaz and Ali Akbar are present in person on interim pre-arrest bail; however, Mr. Muhammad Raheem Advocate holds brief on behalf of Mian Taj Muhammad Keerio on the ground, latter learned counsel is busy before another Bench of this Court.

2. Through instant bail application, applicants named above seek their admission on pre-arrest bail in Crime No.107 of 2019, registered at P.S Khipro District Sanghar, under sections 324, 337-F(vi), 337-A(i), 337-L(ii), 506/2, 504, 147, 148, 149 PPC. Earlier, bail before arrest plea preferred by them before the trial Court has been declined by means of orders dated 28.08.2019.

3. The counsel holding brief for learned counsel for the Applicants submits that though the Applicants are nominated in F.I.R. and have been assigned certain allegations of causing injuries to the injured / P.Ws; however, the said injuries are on non-vital parts of the body of said injured persons; besides, the alleged offences as per medical certificate do not fall within prohibition clause of section 497 Cr.P.C. He, therefore, prays for confirmation of interim pre-arrest bail earlier granted to the Applicants.

4. Learned D.P.G appearing for the State opposes the bail application on the grounds that Applicant Ali Nawaz alias Nawaz caused backside hatchet

blow to P.W. Ibrahim which landed on his left leg knee; whereas Applicant Ali Akbar caused backside hatchet blow to injured / P.W Ibrahim, which landed on his left arm; however, no role is assigned to Applicant Mubarak except aerial firing. He further submits that injuries allegedly sustained by P.W Ibrahim have been declared to be falling under sections 337-F(vi), 337-A(i) and 337-L(ii) PPC; however, admits that punishment provided for the said offence(s) is not beyond the scope of prohibition clause as contained under section 497 Cr.P.C.

5. Learned counsel for the complainant also opposed the bail application on the ground that Applicants have been assigned specific role of causing backside hatchet injuries to P.W / injured Ibrahim, thus they are not entitled for confirmation for interim pre-arrest bail.

6. I have heard learned counsel for the parties and perused the material made available before me on record with their able assistance.

7. Admittedly, the incident is said to have taken place on 31.07.2019 where report thereof was lodged on 09.08.2019; whereas, the distance between place of incident and police station is 20 kilometers; however, no plausible explanation has been furnished by the prosecution for such an inordinate delay. The motive as set up in F.I.R, is that accused had restrained P.W. Ibrahim not to visit their village; however, the time of incident as shown is about 12:30 a.m of the night, which itself sufficient to hold that there is something behind the screen which has not been disclosed by the complainant in his F.I.R. Moreover, the alleged injuries as declared by the Medico Legal Officer do not exceed the limits of prohibition clause of section 497 Cr.P.C. As far as, application of section 324 PPC is concerned, same is yet to be determined by the trial Court after recording evidence of the parties; particularly, the alleged incident is occurred in odd hours of night and at such a moment specifying the names of the accused with their parentage and alleged weapons being carried by them in their respective hands was also a question to be determined by the trial Court after recording evidence of the parties. In these circumstances and in view of the dictum as laid down by the Honourable Supreme Court of Pakistan in the case of **Khalil Ahmed Soomro and**

others v. The State (PLD 2017 Supreme Court 730), the case against the Applicants requires further inquiry within the parameters of sub-section (2) to section 497 Cr.P.C. Accordingly, the instant bail application is allowed. The ad-interim pre-arrest bail earlier granted to the Applicants in terms of order dated 04.09.2019 is hereby confirmed on same terms and conditions.

8. Needless to mention that observations made herein above are tentative in nature would not influence the trial Court while deciding the case on merits.

9. As reported, the case has already been challaned by police, which is now pending for trial before Additional Sessions Judge, Khipro. Hence the accused / Applicants present are directed to continue their appearance before the trial Court till final decision of the case. The trial Court is also directed to expedite the trial and conclude the same as early as possible under intimation to this Court through Additional Registrar. Copy of order be communicated through fax today to the trial Court through Sessions Judge, Sanghar for compliance.

JUDGE

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