

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.961 of 2020

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| <i>Date</i> | <i>Order with signature of Judge</i> |
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For hearing of Bail Application.

19.08.2020

Mr. Ghulam Nabi, Advocate along with Applicants (on bail).
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.
Mr. Anwer Zaib Khan, Advocate for the Complainant along with Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants (i) Rizwan, (ii) Ahsan Ullah, (iii) Waqar and (iv) Waqas Ahmed seek their admission on pre-arrest bail in Crime No.250/2020 of Police Station Jackson, Karachi, under Section 337-A(i)/377-A(iii)/504/34 PPC. The bail plea preferred by the applicants before first forum was declined by means of order dated 02.07.2020, hence this bail application.

Facts of the prosecution case are that on 06.05.2020, at about 1930 hours, complainant Muhammad Ahsan was sitting outside of the house, in the meantime four persons namely Rizwan Ahmed, Ahsan, Waqas and Waqar came there and started abusing him and also beaten him with fists and kicks. Resultantly, he received serious bodily injuries on different parts of his body. Hence, present FIR.

Learned counsel for the applicant submits that FIR is delayed for about 40 days and the distance between P.S and place of occurrence is only 3 kilometers. He next submits that no specific role of alleged injury is attributed to any of the accused except general allegations, which is yet to be established by the prosecution after recording evidence of the parties. He next submits that no such incident had ever occurred and medico legal officer has issued a false certificate at the instance of complainant, which has been challenged by the accused before Special Medical Board, Services

Hospital and Civil Surgeon, Karachi, where the complainant, who himself is injured, has not been appearing only to save his skin. He further submits that applicants after grant of bail by this Court, have also joined the trial proceedings before the trial Court vide Sessions Case No.1338/2020. In support of his contention, he files certified copy of the case diary duly issued by the trial Court, same is hereby taken on record. In support of his contention, he places reliance upon the cases of (i) *MUHAMMAD IBRAHIM Versus The STATE (2017 YLR Note 241)*, (ii) *ISRAR RAZZAK Versus The STATE and another (2017 YLR Note 242)*, (iii) *Malik SHERAZ ZAFAR Versus The STATE and others (2017 YLR Note 243)*, (iv) *KASHIF AMAN Versus The STATE and another (2014 P.Cr.L.J 622)* and (v) *(ZAMIN SHAH Versus The STATE and another (2014 P.Cr.L.J 624)*.

On the other hand, learned Deputy Prosecutor General, Sindh opposes the bail application on the pretext that applicants are nominated in FIR with specific role and injury allegedly sustained by the complainant is grievous one; hence, do not deserve any leniency in shape of pre-arrest bail.

Learned counsel for the complainant also opposes the bail application and while adopting the arguments advanced by learned Deputy Prosecutor General, Sindh, submits that applicants have attacked upon shop of the complainant, where he was caused such injury on his person at the hands of applicants.

Both, learned Deputy Prosecutor General, Sindh as well learned counsel for the complainant could not controvert the fact that FIR is delayed for about 40 days, for which no plausible explanation has been furnished by the prosecution.

Heard arguments and perused the record. Admittedly, the incident, as is evident, is said to have taken place on 06.05.2020, whereas, FIR thereof, was got registered by the complainant on 14.06.2020, i.e. with delay of about 40 days; though the distance between P.S and place of occurrence is only 1 kilometer, but no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases, has always been held by the Superior Courts, as fatal for the

prosecution. As far, injury allegedly sustained by the complainant, is concerned, as is admitted by him in his FIR, all the accused had allegedly caused fists blows to him jointly and no specific role is assigned to any of them. Mere heinousness of the offence does not mean that an innocent who is under blame would be prejudiced particularly at bail stage. It is well settled principle of law that every accused will be presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favor of the prosecution particularly at bail stage. In the circumstances, reliance can be placed upon dictum laid down by the Honourable Supreme Court of Pakistan in case of *KHALEEL AHMED SOOMRO Versus The STATE (PLD 2017 SC 730)*.

The upshot of above discussion is that the applicants have made out a good prima facie case for their admission on pre-arrest bail within the meaning of sub-section 2 to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed; interim bail granted earlier to applicants on 06.07.2020 is hereby confirmed on same terms and conditions.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to his surety in terms of Section 514 Cr.P.C. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned, over fax, for compliance.

JUDGE

Zulfiqar/P.A