

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. B. A. No. S- 807 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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03.12.2021

Mr. Hemandas S. Sanghani, Advocate along with the applicant.
Complainant present in person
Mr. Fayaz Hussain Sabki, A.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant Criminal Bail Application, applicant Riaz Hussain alias More Bux seeks pre-arrest bail in Crime No. 256 of 2021, registered for offenses under section 459, 337-A(i) & 34 PPC at Police Station Badin

2. Earlier vide order dated 14.9.2021 without touching merits of the case, the applicants / accused were admitted to interim pre-arrest bail and today it is fixed for confirmation or otherwise.

3. The accusation against the applicant is that on the intervening night of 28.8.2021 and 29.8.2021, at about 3:00 a.m., in the house of complainant, the applicant More Chandio and others caused sharp side hatchet blow to Nadir on his head, Hubdar caused sharp/hard side hatchet blow to witness Nadir Ali on his head; and, accused persons made aerial firing and went away. Such report of the incident was lodged at Police Station Badin.

4. Mr. Hemandas S. Sanghani learned counsel for the applicant argued that the applicant is innocent and has falsely been implicated in this case due to enmity over land; the story narrated in the FIR is false, fabricated, and concocted one; FIR is delayed by ten hours without any plausible explanation; no specific role is assigned to the applicant in FIR; P.Ws are interested; Section 459 PPC is not applicable and the case of accused requires further inquiry and if bail is not confirmed the accused will suffer irreparable loss. Learned counsel has relied upon the case of *Abdul Raheem Versus the State (2003 YLR-506)*.

5. Complainant present in person has prayed for dismissal of instant bail application.

6. Mr. Fayaz Hussain Sabki learned A.P.G. supported the stance of complainant and vehemently opposed this bail application on the ground that the name of applicant is mentioned in the FIR with specific role. Nothing is available on record to show malafide on the part of the complainant side, so the applicant is not entitled to the concession of pre-arrest bail.

7. I have heard learned counsel for the applicant, complainant who is present in person and learned A.P.G and perused the material available on record.

8. It has been noticed that after the promulgation of Criminal Law 2nd Amendment Ordinance, 1990, the concept of simple or grievous injury has been changed and a new definition of hurt has been introduced in Section 332, PPC in the following words: -

8. “337 Shajjah (i) Whoever causes, on the head or face of any person, any hurt which does not amount to Itlaf-i-udw or Itlaf-i-salahiyat-i-udw, is said to cause Shajjah. (2) The following are the kinds of Shajjah, namely: -

- a) Shajjah-i-Khafifah;
- b) Shajjah-i-mudihah;
- c) Shajjah-i-hashimah;
- d) Shajjah-i-munaqillah;
- e) Shajjah-i-ammah; and
- f) Shajjah-i- damighah.

(3) Whoever causes Shajjah-

(i) without exposing bone of the victim, is said to cause Shajjah-i-khafifah;

(ii) by exposing any bone of the victim without dislocating it, is said to cause Shajjah-i-mudihah;

(iii) by fracturing the bone of the victim and without dislocating it, is said to cause Shajjah-i-hashimah;

(iv) by causing fracture of the bone of the victim and thereby the bone is dislocated, is said to cause Shajjah-i-munaqillah;

(v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause Shajjah-i-ammah; and

(vi) by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause Shajjah-i-damighah.

9. Shajjah-i-Khafifah as per the definition in Section 337 PPC, is an injury caused to the victim without exposing his bone whereas Shajjah-i-mudihah is an injury where the bone of the victim is exposed without causing fracture, therefore, these are two different kinds of Shujjah under Section 337, PPC and its punishment is provided under Section 337-A (i) and 337-A (ii), PPC respectively. A very significant difference in two clauses under Section 337-A (i) and Section 337-A(ii), PPC is that the offense “Shajjah-i-Khafifah” under Section 337-A(i) PPC as per Schedule 2 of the Cr.P.C is bailable and non-cognizable whereas offense “Shajjah-i-mudihah” under Section 337- A(ii), PPC is non-bailable and cognizable offense.

10. As per mashirnama of injuries dated 27.8.2021, three incised wounds were found on the head of injured Nadir Ali, whereas the medical report prima-facie show one injury caused by sharp cutting instrument falls within the ambit of Shajjah-Khafifah 337 A (i) and F-(ii) PPC, punishable for 2 years and the same does not fall within the prohibitory clause of section 497 Cr.P.C; besides that in the FIR complainant stated that two injuries on the person of injured one of sharp cutting and another of hard and blunt substance, prima-facie shows the case of further inquiry.

11. It is well-settled principle of law that grant of bail in cases covered under the said provision is a rule and refusal is an exception. Reliance is placed in the cases of *Tariq Bashir v. The State* (PLD 1995 SC 34) and *Muhammad Tanveer V. The State and another* (PLD 2017 SC 733).

12. Record reveals that co-accused Hubdar has been granted post arrest bail in the same crime by learned trial court vide order dated 23.9.2021. Applicant also seeks bail on the ground of rule of consistency. On the aforesaid proposition I am guided by the decision of Honorable Supreme Court rendered in the case of *Farman Ali Vs. The State* (1997 SCMR 971).

13. From the facts and circumstances as stated above, and from the tentative assessment of the material available on record the applicant has made out a case for grant of bail, therefore, the bail application is allowed, interim pre-arrest bail already granted to the applicant named above vide order dated 14.9.2021 is confirmed on same terms and conditions.

14. Before parting with this order, it is observed that the observations made in this order are tentative in nature and the same would have no bearing on the outcome of trial of the case. It is made clear that in case, if applicants/accused during proceedings before the trial Court, misuse the concession of bail, then the trial Court would be competent to cancel their bail without making any reference to this Court.

15. Bail application stands disposed of.

JUDGE

karar_hussain/PS*