

**IN THE HIGH COURT OF SINDH, SUKKUR BENCH, SUKKUR**  
**Criminal Bail Application No.S-773 of 2021**

Applicants: Nehal Khan and others through  
Mr. Nawab Ali Pitafi, Advocate.

Complainant: Through Shamsuddin N. Kuber,  
advocate

State: Through Syed Sardar Ali Shah,  
Deputy Prosecutor General

Date of hearing: 07.03.2022

Date of decision: 07.03.2022

**ORDER**

**Zulfiqar Ali Sangi, J:** Through this application, applicants namely Nehal Khan, Ihsan Ali, Shoukat Ali, Qurban Ali, Khadim Hussain, Muhabbat Ali and Liaquat Ali seek their **pre-arrest bail** in Crime No. No.227 of 2021, registered at P.S. Daharki, for offences punishable u/s 452, 324, 337-F(i), 337-A(i), 337-L (ii), 337-A(ii), 114, 504, 147, 148, 149 PPC as earlier their bail application was declined by learned Additional Sessions Judge, Daharki vide order dated 19.11.2021, hence this application.

2. The brief facts of the prosecution case as per FIR lodged by the complainant namely Mst. Hayatan w/o Muhammad Tahir at P.S Daharki on 23.08.2021 at about 1930 hours, alleging therein that dispute over the matter of street with accused Nehal and others on which they were annoyed and said that they will teach lesson, on 23.07.2021 complainant, her sons namely Anwar, Shahzado and grandson Riaz Ahmed S/o Muhammad Nawaz and others family members were present in their house it was 06:00 P.M suddenly each accused 1. Nehal s/o Khuda Bux armed with rifle, 2. Ihsan Ali Ishoo armed with Pistol, Shokat Ali with Iron rod, 4. Qurban Ali with lathi, 5. Khadim Hussain with Lathi, 6. Abdul Haleem s/o Haji with hatchet, 7. Muhabbat Ali s/o Nehal with hatchet, 8. Liaquat Ali s/o Nehal with Iron rod all by caste Dahar, R/o village Dodo Khan Dahar Taluka Daharki forcibly entered into the house of complainant, on coming accused Nehal gave abusive language to Complainant party, and also instigate to other accused not to spare, Complainant party replied them be gentle not to abuse on saying so accused Ihsan Ali @ Ishoo made straight fire of pistol with intention to commit murder upon son of complainant namely Anwar Ali which hit him on right side of buttock who raised cries and fell down on earth, accused

Shoukat Ali caused Iron blow to Anwar Ali which hit him on wrist of left arm, caused Qurban Ali caused lathi blow to Shahzado which hit him on forehead, accused Khadim caused lathi blow to Shahzado which hit him on nose who raised cries and fell down, accused Abdul Haleem caused hatchet blow to grandson of complainant namely Riaz Ahmed which hit him on wrist of right arm, accused Muhabbat Ali caused hatchet blow to Riaz Ahmed which hit him on right thigh of leg, accused Liaquat Ali caused Iron blow to Riaz Ahmed which hit him on back who raised cries and fell down, thereafter Complainant party raised cries on their crises nephew of Complainant namely Nadeem son of Abdul Hakeem came running who saw and identified the accused person, thereafter female members gave the names of Almighty Allah and Rasool (P.B.U.H) to accused persons, thereafter accused who were armed with weapons made aerial firing for harassment thereafter all accuses went away along with weapons, lathies, hatchets and Iron rods thereafter complainant party took the injured and came at Civil Hospital Dharki and obtained letter from police and made treatment of injured, the doctor referred to injured Riaz Ahmed and Anwar Ali. Complainant received MLCs NO.399, 400, 401398 dated 24.07.2021, thereafter complainant came at P.S and lodged the FIR.

3. Learned Counsel representing the Applicants, at the very outset, submits that applicants/accused are quite innocent and have been falsely implicated by the Complainant due to enmity, which fact has also admitted in the contents of FIR; that there is delay of about one month in lodging of FIR for which no explanation has been furnished hence false implication cannot be ruled out; that actually complainant party attacked upon the house of applicant party and made straight fire upon the wife of Applicant No.1 and mother of remaining applicants, who was died while several persons were received injuries and in this regard FIR bearing No.195/2021, under Section 302, 324, 147, 148, 149, 429 PPC was registered at P.S. Daharki against Complainant party; that there was counter case registered by the Complainant bearing FIR No.227/2021, wherein date and time of incident are same; that all the PWs are kith and kin of the Complainant and prepared false and managed story to put pressure upon the applicant party; that there is no reasonable ground to believe that the offence has been committed by present applicants/accused, hence matter requires further inquiry.

4. Conversely, learned Counsel representing the Complainant vehemently opposed the grant of bail to the applicants on the ground that the applicants are nominated in FIR with specific role of causing injuries, hence they do not deserve any concession of bail; besides offence fall within prohibitory clause of Section 497 Cr.P.C, therefore, bail application may be dismissed.

5. Learned DPG, while adopting the arguments of learned Counsel for the Complainant, also opposed the grant of bail on the ground that active role of causing firearm, lathi and Iron rod blows has been attributed to the applicants/accused; that complainant as well as PWs in their statements have specifically nominated them in the commission of offence; that ocular account is supported by medical reports issued by the doctor, hence they do not deserve for confirmation of their pre-arrest bail.

6. I have heard learned Counsel representing the Applicants/ Complainant as well as learned DPG and have gone through the material available on record with their able assistance.

7. Perusal of record reflects that the role of applicant No.1 Nehal Khan is that he had instigated the other accused on such Applicant No.2 Ihsan Ali @ Ishoo made straight fire of pistol upon son of complainant, which hit him on right side of buttock, Applicant No.3 Shoukat Ali caused Iron rod blow to Anwar Ali, which hit him on wrist of left arm, Applicant No.4 Qurban Ali and Applicant No.5 Khadim Hussain cause lathi blows to Shahzado, Applicant No.6 Muhabat Ali caused hatchet blow to Riaz Ahmed which hit him on right thigh of leg and applicant No.7 liaquat Ali caused Iron rod blow to Riaz Ahmed, which hit him on back. Applicants/accused were armed with weapons caused blows to all the witnesses, therefore, in the alleged offence several persons were received injuries having support of medical evidence. The tangible and sufficient evidence is available on record, which showing the spur movement of applicants/accused, so that such incident took place. The medical evidence is in line with ocular account as narrated by the complainant in his FIR. As such applicants/accused have played specific role in the commission of offence.

8. Contention of learned Counsel that counter FIR was registered against the Complainant party by the Applicant party

therefore it is to be determined after recording the evidence that which party was aggressor and this ground alone is sufficient to grant bail to the applicants, has no legal force in view of the fact that the applicants are nominated in FIR with their specific roles. Admittedly, applicants are nominated in the FIRs with specific role and both the parties have suppressed the facts about the injuries received by each party and even fatal shot received by deceased in the counter FIR, therefore, they are not entitled for concession of bail. Reliance in this regard can be placed on the case of Habibullah Jan and another vs. The State through AG Khyber Pakhtunkhwa and others (2020 SCMR 1278) wherein Hon'ble Apex Court has observed as under:-

*“Having regard to the magnitude of violence endured by the witnesses, no less than three in number, prima facie, supported by medical evidence, statements of the witnesses and sport recoveries, the High Court having found reasonable grounds, standing in impediment to petitioners’ release on bail in the absence of any consideration calling for further probe so as to circumvent statutory bar embodied in Section 497 of the Code of Criminal Procedure, 1898, declined the request, a conclusion arrived at in its discretion and, on our own analysis, found by us as intra vires being judicially structured, no interference is called for. Petition fails. Leave declined”.*

9. Further the counter version by itself cannot be pressed into service as of right for grant of bail unless there is a scope of further inquiry in the matter. **Nasrullah Khan v. Mst. Baskhandana and another (1997 MLD 2071)** even otherwise the ground that in cross-case persons charged for having injuries have been released on bail is no ground to grant bail particularly when allegations against accused are mere serious. **Imranuddin and another v. The State (1983 SCMR 278)** the plea that bail should be allowed in every case which had a counter-version is not a hard and fast rule, and case has to be examined on its own merits and circumstance. **Arbelo and 2 others v. The State (2013 P Cr L J 155)**.

10. It is settled principal of law that deeper appreciation of evidence is not permissible while deciding the bail plea of the accused and material collected during investigation is to be assessed tentatively. From the tentative assessment of material available on the record in shape of FIR, statements of the witnesses recorded under section 161 Cr.P.C including medical evidence, prima facie, there appears sufficient evidence/material against the

applicants which connect them with the commission of offence, therefore, the applicants are not entitled for the benefit of bail. Resultantly the bail application of the applicants is dismissed. Interim bail granted to them vide order dated 02.12.2021 is hereby recalled.

11. The observations made hereinabove are tentative in nature and shall not prejudice the right of either party at the trial.

12. The bail application is disposed of in the above terms.

JUDGE

*Faisal Muntaz/PS*