

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-89 of 2022

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

14.03.2022

Mrs. Razia Ali Zaman Patoli, Advocate for the applicants.

Mr. Muzamil Khan, Advocate for the complainant.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicants Shah Faisal and Nasrullah Shah seek their release on post arrest bail in Crime No.140 of 2021, P.S. Matli District Badin, under sections 324, 506(2), 337-F(ii), 337-A(i), 337-H(ii),504, 35 P.P.C.

2. The facts and particulars of the case are already mentioned / available in the memo of instant bail application as well impugned order, hence, not to be reproduced / repeated here again.

3. Prior to this the applicants preferred pre-arrest bail application before the Court of Sessions Judge Badin which subsequently was dismissed by 1st Additional Sessions Judge/MCTC Badin vide order dated 24.09.2021 and again it met with same fate through order passed by this Court on 25.10.2021 in (Criminal Bail Application No.S-860 of 201). Thereafter the applicants preferred Criminal Petition No.146-K of 2021 before Hon'ble Supreme Court of Pakistan which too was dismissed through esteemed order dated 25.11.2021. After rejection of their bail plea before Hon'ble Supreme Court of Pakistan the applicants have surrendered before the Trial Court and filed

second bail application, which after hearing the parties was turned down by means of order dated 12.01.2022, hence this bail application.

4. Learned counsel for the applicants submits that though the applicants are nominated in the F.I.R; however, no specific role has been assigned to them. She submits the specific role of causing hatchet injury to injured PW Mushk Ali is assigned to co-accused Ali Qasim Shah, who is also in custody. She after going through the F.I.R submits role against the applicants is general in nature and accusation against them requires further probe. She further submits that all the offences are bailable except section 324, 506(2) P.P.C which are yet to be established by the prosecution after recording evidence of its witnesses. Hence prays for their release on bail.

5. Learned Assistant Prosecutor General, Sindh appearing for the State opposes the bail application on the ground that the presence of the applicants at relevant time over the place of incident had not been denied besides they are nominated in F.I.R, therefore, they do not deserve any leniency in shape of their release on bail. She however, could not controvert the fact that no specific role is assigned to them and that injuries allegedly sustained by injured PW Mushk Ali are not grievous in nature.

6. Mr. Muzamil Khan, Advocate appearing for complainant opposes the bail application on the ground that in first round the bail plea preferred by the applicants was turned down upto Hon'ble Supreme Court of Pakistan and later they have surrendered, therefore, they are not entitled for post arrest bail. He further admits that medico-legal certificate issued by the medico-legal officer in favour of injured Mushk Ali has been put in abeyance by the Special Medical Board due to non-appearance of the injured before the Special

Medical Board. He; therefore, opposes the bail application and submits that case has been assigned to MCTC Badin where schedule has also been issued, therefore, it will be appropriate to direct the Trial Court to conclude the Trial within shortest possible time.

7. Heard arguments and perused the record.

8. No doubt, the applicants are nominated in F.I.R; however, they have been assigned no specific role or particular injury to any injured PW or member from the complainant party. Mere their presence is not sufficient to keep the applicants behind the bars when accusation against them is yet to be determined by the Trial Court after recording evidence of the prosecution witnesses. The F.I.R as is evident, is delayed with about two and half months though the delay in lodgment of F.I.R may not be a ground to defence yet when it has not been explained by the prosecution then benefit of such delay could be extended to accused, particularly, at bail stage. The injury allegedly sustained by injured PW Mushk Ali on his head through hatchet was assigned to accused Ali Qasim Shah, who too is in custody. The injury allegedly sustained by the injured PW Mushk Ali on his head has been declared by the Medico-legal Officer as *Shajjah-i-Khafifa* which is bailable, therefore, the other injuries as shown have allegedly been sustained by the injured on his different parts of the body which are non-vital parts. All the sections applied under the F.I.R are bailable except sections 324 and 506(2) P.P.C. The applicants whether or not had attempted to cause qatl-i-amd of the complainant or the injured is a question which is yet to be thrashed out by the Trial Court after recording evidence of the prosecution witnesses, therefore, application of sections 324 read with section 506(2) P.P.C is also to be thrashed out by the Trial Court after recording evidence of the prosecution

witnesses. It has not been denied by the prosecution that applicants when assigned general role and no specific role was alleged against them which subsequently was proved to be grievous in nature or proved to be fatal for the lives of the injured as well members of the complainant party, hence, their implication in this case, in the light of above factual position, requires further probe. In the circumstances and in view of the dicta laid down by the Hon'ble Supreme Court of Pakistan in case of ***KHALIL AHMED SOOMRO and others Vs. The State [PLD 2017 Supreme Court 730]***. The case against the applicants requires further inquiry within the meaning of sub-section (2) of section 497 Cr.P.C. Consequently, the bail application in hand is hereby allowed. The applicants shall be released on bail subject to furnishing their solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) each and P.R bonds in the like amount to the satisfaction of learned Trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and may not prejudice the case of either side at trial before the trial Court.

10. Trial Court is directed to expedite the trial and conclude the same within shortest possible time.

JUDGE

*Muhammad Danish Steno**