

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

(1) Crl. Bail Appln. No. S- 205 of 2021.

Applicant: Nisar Ali, 2. Ghazi @ Ghulam Hussain and 3. Imtiaz all by caste Kharos, in person

(2) Crl. Bail Appln. No. S- 285 of 2021.

Applicant: Suhail Ahmed Kharos, in person

The State: Through Mr. Muhammad Noonari, Deputy Prosecutor General.

Complainant: Sono Kharose, present in person

Date of hearing: 02.08.2021.

Date of order: 02.08.2021.

ORDER

Adnan-ul-Karim Memon, J: - The captioned bail applications are being taken up together and dispose of vide this single order, as common facts, arising out of CrimeNo.11/2021of Police Station Usman Isani @ Bado, are involved.

2. In principle, applicants are seeking the indulgence of this Court against the order dated 24.04.2021 passed by the learned Sessions Judge, Shikarpur, whereby pre-arrest bail was denied to them in the aforesaid FIR No.11/2021, for offenses punishable under section 397 and 394 *P.P.C.*

3. Primarily, the accusation against the applicants, as set out in the F.I.R is that on 29.8.2020, they entered into the house of the complainant, just to commit an offense of robbery by force. On resistance, the applicants are alleged to have caused lathi blows to the Complainant as well his family members. Such report of the incident was lodged on 07.03.2021 with Police Station Usman Issani @ Bado, after a delay of approximately six months. The applicants preferred pre-arrest bail to the learned Sessions Judge, Shikarpur by filing criminal bail application No.337/2021 which was heard and decided on 24.4.2021, whereby they were denied pre-arrest bail. They being aggrieved and dissatisfied with the decision of learned Sessions Judge, Shikarpur approached this court on 07.5.2021 and 25.6.2021 respectively. This court vide orders dated 17.5.2021 and 25.6.2021 admitted the applicants on interim pre-arrest bail.

4. It is *inter alia*, submitted by the applicants, who are present in court that they are innocent and have been falsely implicated in the alleged crime by the complainant in connivance with the local police with malafide intention and ulterior motives. Per applicants, there is the inordinate and unexplained delay for about 6 months and 6 days in lodging the FIR. They added that section 397 P.P.C is not applicable in the case on the premises that nothing has been robbed by them; and, section 394 PPC does not fall within the prohibition contained in section 497(1) Cr.P.C. They pointed out that no independent evidence is available on the record to connect them to the alleged crime. That the prosecution witnesses recorded their statement after a considerable period, thus their version required corroboration which factum is lacking in this case; that their case requires thorough probe into their guilt whether such incident as portrayed by the complainant took place or otherwise. Per applicants, the complainant has given false cover to the alleged occurrence and had malafidely ascribed the role of the applicants of causing lathi blows to him and his family members, which negates the ocular as well medical account. They further submitted that they are attending the learned trial Court on regular basis; and they are no more required for further investigation, as the challan has already been submitted before the learned trial Court. They prayed for a grant of pre-arrest bail in the subject F.I.R on the same terms as outlined in the orders passed by this court while granting interim pre-arrest bail to them.

5. Learned DPG along with complainant supported the impugned order passed by the learned trial court however, failed to explain the delay of six months in lodging the FIR.

6. I have heard the applicants who are present in person as well as the learned DPG along with the complaint and perused the material available on record.

7. The learned trial Court has declined the relief of pre-arrest bail to the applicants making the observation that their names appeared in the F.I.R, entered into the house of complainant, and untied the cattle by show of force. Primarily Pre-arrest bail is an extra-ordinary relief and can only be extended to an innocent person who is implicated in the case on the basis of malafide, however, the learned trial Court did not appreciate that the "*malafide*" being a

state of mind cannot always be proved through direct evidence, and it is often to be inferred from the facts and circumstances of the case. In the instant case, prima facie the ingredients of offense of alleged robbery are yet to be determined by the trial court after recording of evidence, so far as the injuries are concerned the concerned police have not inserted such sections in the F.I.R and/or in challan; and, it is yet to be determined whether these were attracted or otherwise. The delay of six months in lodging of the F.I.R is uncertain; and, it is for the trial court to determine the pro and contra while malafide of the complainant and police could not be ruled out at this point. Besides the above the applicants are attending the trial court, thus no fruitful result will be achieved to send the applicants behind the bars. Even the alleged injuries which are punishable for imprisonment, the most up to five years as *ta'zir*, which does not fall within the prohibitory clause of section 497, Cr.P.C.

8. In the circumstances, I do not find any justifiable reason to send the applicants behind the bars, however, I find it a fit case for exercise of discretion to admit the applicants to pre-arrest bail to save them from unjustified arrest, consequent humiliation and the curtailment of their right to liberty, therefore, ad-interim pre-arrest bail already granted to them on 17.5.2021 and 25.6.2021 is hereby confirmed subject to their furnishing *further surety* in the sum of Rs.25,000/- (Rupees Twenty Five thousand) *each* and P.R bonds in the like amount to the satisfaction of Additional Registrar of this Court within two week.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case on merit. In case the applicants-accused in any manner try to misuse the concession of bail, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.

10. These bail applications stand disposed of in the above terms.

Judge