

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

Cr. B.A. No.S-1166 of 2021

Rahim Bux.Versus.The State

Cr. B.A. No.S- 1003 of 2021

Muhammad Bux and another. .Versus.The State

1. For order on office objection.
2. For hearing.

08.04.2022

Mr. Mumtaz Alam Laghari, Advocate for applicants in both matters, alongwith applicant Rahim Bux (on interim pre-arrest bail in Cr. B.A. No.S-1166 of 2021).

Ms. Rameshan Oad, A.P.G.

Complainant Muhammad Anwar present in person.

ORDER

SALAHUDDIN PANHWAR, J.-Since both captioned bail applications arisen out of one and same FIR and involve common question of facts and law, hence the same are being disposed of by this common order.

2. Through captioned bail application bearing No.S-1166 of 2021, applicant Rahim Bux seeks pre-arrest bail in Crime No.13 of 2021, registered at Police Station Jhangara, under section 382 PPC; whereas through Cr. Bail Application No.S-1003 of 2021, applicants Muhammad Bux and Raza Muhammad seek post-arrest bail in same crime. Earlier their respective pleas for grant of pre-arrest as well as post-arrest bail were declined by the learned Additional Sessions Judge, Sehwan vide his orders dated 04.12.2021 and 01.11.2021, respectively, and now they approach this Court for same relief.

3. As per FIR, lodged by complainant Muhammad Anwar, allegations against the applicants are that they alongwith two unidentified persons duly armed with deadly weapons came at the place of vardat and committed theft of 36 solar plates, one Dinamor, one Invertor as well as other articles from the land of complainant and left the scene while putting the same in a tractor trolley.

4. Learned counsel for the applicants/accused has contended that the applicants are innocent and they have falsely been implicated in this case with mala fide intention and ulterior motives; that there is civil dispute between the parties over landed property; that there is unexplained delay of about 07 days in lodging the FIR hence deliberation and false implication of three brothers in one offence cannot be ruled out. Besides, he contends that in the circumstances of the case section 382 PPC is not applicable and only ingredients of section 380 PPC are attracted, which does not fall within prohibitory clause of section 497 Cr.P.C, hence the applicants are entitled for grant of pre-arrest/post-arrest bail.

5. On the other hand, learned A.P.G appearing for the State opposed the captioned bail applications; however, she is not in a position to controvert the fact that ingredients of section 382 PPC are not attracted in the present cases, as no hurt was caused.

6. The complainant present in person, also vehemently opposed the confirmation of interim pre-arrest bail earlier granted to applicant Rahim Bux as well as grant of post-arrest bail to applicants Muhammad Bux and Raza Muhammad.

7. Heard learned counsel for the applicants, learned A.P.G. appearing for the State as well as the complainant in person and perused the record. Perusal of FIR reflects that ingredients of section 382 PPC are not attracted in the circumstances of the case and at the most section 380 PPC is applicable for which maximum punishment as provided in the Statute is 07 years, hence the case of the applicants does not fall within prohibitory clause of sub-section (1) of section 497 Cr.P.C; therefore, in view of the dictum laid down in the cases of **Tariq Bashir**

and 5 others V The State (PLD 1995 Supreme Court 34) and **Muhammad Tanveer v. The State and another** (PLD 2017 Supreme Court 733), grant of bail in an offence not falling within prohibitory clause of section 497 Cr.P.C, is a rule and its refusal is an exception. No exceptional circumstance has been agitated by the prosecution and/or the complainant present in person. Further, the FIR is delayed for 07 days; the case is pending adjudication and applicant Rahim Bux (Cr. B.A. No.S-1166 of 2021) after grant of interim pre-arrest has not misused the concession and is regularly attending trial of the case.

8. For what has been discussed above, interim pre-arrest bail earlier granted to applicant Rahim Bux (Cr. B.A. No.S-1166 of 2021) vide order dated 22.12.2021 is hereby confirmed on same terms and conditions; whereas applicants Muhammad Bux and Raza Muhammad (Cr. B.A. No.S-1003 of 2021) are granted post-arrest bail subject to furnishing their solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) each and P.R Bond in the like amount to the satisfaction of trial Court.

The bail applications stand disposed of.

JUDGE

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