

Order Sheet
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-101 of 2022
Crl. Bail Application No.S-114 of 2022

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on O/objection at flag-A.
2. For hearing of bail application.

Date of hearing **16.05.2022**

Mr. Iftikhar Ali Arain Advocate for applicants.
Mr. Shabir Ali Bozdar Advocate for complainant.
Mr. Khalil Ahmed Maitlo Deputy Prosecutor General.

ARSHAD HUSSAIN KHAN, J.- This common order will dispose of captioned bail applications as the same have arisen out of one and the same incident and FIR No.12/2022 registered at Police Station, Tharushah, District Naushehro- Feroze for offences punishable under Sections 452, 324, 147, 148, 114, 504 PPC. The applicants Gamthar son of Gulab Khan and Lakhmir son of Muhammad Yameen in Crl. Bail application No.S-101 of 2022 seek pre-arrest bail while applicants Gulab son of Abul Khair, Muhammad Yameen son of Abul Khair and Akram Ali son of Muhammad Yameen seek post-arrest bail in the above said crime. Earlier their pre-arrest and post-arrest bail applications were dismissed by learned Additional Sessions Judge-I, Naushehro Feroze, vide common order dated 24.02.2022.

2. Precisely, prosecution case as depicted in the FIR lodged by complainant Sajjan Khan son of Abdul Khair on 22.01.2022 at 1430 hours at Police Station Tharushah is that he is DDPP and posted in the court of Ist Additional Sessions Judge, Naushehro Feroze. The applicant Muhammad Yameen Ujjan used to rope his cattle in front of complaint's house and throw the dung (Bhan) on the road to which complainant restrained him from doing so, which caused annoyance to the applicant. On 22.01.2022, at about 8.00 am, when the complainant came out from his house for going to attend his job, he found applicants/accused Gulab Khan, Muhammad Yameen, Gamthar, Shahzado, Farooque Ahmed, Lakhmir and Akram all armed with Lathis

in his front. Accused Muhammad Yameen instigated other accused to kill the complainant. The complainant in order to save his life ran towards his house but accused by following him entered in the house and caused lathi blows to him on different parts of his body while accused Farooque caused lathi blow to his son Suhail on his right arm whereas accused Muhammad Yameen caused lathi blow to complainant's brother Suhrah on his head and accused Shahzado caused lathi blow to the daughter of complainant Mst. Saima Parveen on her forehead. Thereafter, all the accused by kicking, fisting and using abusive language to the complaint party left the place of the incident. The Complainant thereafter took the injured persons at Police Station, obtained letter for medical treatment and then he lodged the FIR.

3. Learned counsel for the applicants contended that the applicants are innocent and have falsely been implicated in the case by the complainant with malafide intentions and ulterior motives. He has further contended that instant FIR has been lodged owing to some family dispute; that there is a delay of 6½ hours in lodging of the FIR for which no plausible explanation has been furnished; that malafide and ulterior motives of the complainant is evident from the fact that he has widened net to fish out all members of one and the same family in order to quench his thrust and ego otherwise there is no iota of truth in the allegations; that all the sections applied in the FIR are bailable while Section 452 PPC does not apply as both the parties are brothers and nephews *inter se*. It is also contended that perusal of the contents of the FIR, shows that the charge under Section 324 PPC against the applicants is not made out as the alleged injuries are the result of Lathi blows that too not on vital parts of the body of injured persons. Even otherwise, the applicability of Section 324 will be determined at the time of trial. It is further contended that there is no eye witness of the alleged incident; that medical evidence is inconsistent with ocular testimony; that the alleged injuries attributed to the accused persons is declared as Shijja-i-Khafifah, punishable upto two years and are bailable. It is also urged that grant of bail does not mean the discharge of a person from accusation, but only the custody is to be shifted from the jail into the hands of surety as under the law there is no provision for compensation of accused if after termination of trial he would be

declared as innocent. By contending so, he has sought grant of pre-arrest and post-arrest bail to the applicants/accused. In support of his contention he has relied upon cases of *Muhammad Aslam v. The State* (2002 P.Cr.LJ 110), *Muhammad Ramzan v. The State* (2002 P.Cr.LJ 108) and *Sher Khan and 2 others v. The State* (2003 P.Cr.LJ 1149).

4. Mr. Shabir Ali Bozdar, learned Counsel for complainant vehemently opposed the bail application on the grounds that the applicants/accused are nominated with specific roles in the FIR and they have formed an unlawful assembly caused injuries to the complainant and his witnesses; that the applicants/accused have shared a common intention and have actively participated in the commission of offence; that ocular evidence is fully supported by the medical evidence, which *prima facie* brought the case of accused within the mischief of Section 324 PPC and hit by statutory prohibition. By contending so, he has prayed for rejection of bail applications. He has relied upon the cases of *Ghulam Qadir v. The State* (2022 SCMR 750), *Bilal Khan v. The State through P.G. Punjab and another* (2020 SCMR 937), *Riaz Ahmed v. The State* (2009 SCMR 725), and *Rana Abdul Khaliq v. The State and others* (2019 SCMR 1129).

5. Learned Deputy Prosecutor General while adopting the arguments advanced by learned counsel for complainant has opposed the bail applications. He has added that the statements of injured victims supported by medical examinations of even date, the applicants are not entitled for concession of bail. He has relied upon case of *Gulshan Ali Solangi v. The State through P.G Sindh* (2020 SCMR 249).

6. Heard learned counsel for the parties and perused the record. Admittedly, there is an inordinate delay of about 6½ hours without explanation, which is sufficient to rust the credibility of the prosecution story. The role attributed to the present applicants that they allegedly caused lathi injuries to the complainant and PWs, which have been declared by the Medico-legal Officer as *Shujjah-i-Khaifah*, punishable u/s 337A(i) PPC, which is bailable and does not fall within the prohibitory clause. Moreover, the parties are on strained relations to each other, therefore, false implication of accused out of malafide cannot be ruled out. The medical evidence is inconsistent with the

ocular testimony. Moreover, the assembly of accused at the place of occurrence will be determined at the time of trial after recording evidence whether the applicants are held responsible for the alleged offence or not. All the Sections applied in the FIR except Section 324 PPC are bailable, whereas Section 452 PPC carries maximum punishment upto 07 years, which is to be determined at the time of trial after recording evidence. Insofar as the Section 324 PPC is concerned, from the medico-legal report it is clear that all the injuries allegedly caused by the accused are on the non-vital part of the body of the injured P.Ws, thus it cannot be said with certainty that the accused had intention to commit murder of injured P.Ws, as such, the question of applicability of section 324 PPC to the case needs serious consideration at the trial stage. The record shows that the applicants/accused are not previous convict or hardened criminal. Moreover, the applicants/accused namely Gulab, Muhammad Yameen and Akram Ali have been in continuous custody since their arrest and are no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping them behind the bars for an indefinite period pending determination of his guilt. It is well settled that while examining the question of bail, court has to consider the minimum aspect of the sentence provided for the alleged offence. Truth or otherwise will be determined only after recording of the evidence by the trial court. It may be observed that the offence alleged against the applicants/accused falls outside the prohibitory clause of Section 497, Cr.P.C. in such like a case grant of bail is a rule and refusal is an exception. Reliance is placed on the case of Tariq Bashir and 5 others v. The State [PLD 1995 SC 34].

7. Case law relied upon by learned counsel for the complainant as well as the DPG have been examined and the same were found inapplicable being distinguishable from the facts of the present case.

8. In view of the above facts and circumstances of the case, as well as the dictum laid down by the Honourable Supreme court of Pakistan, in the case of Muhammad Tanveer v. The State and another (PLD 2017 Supreme Court 733), I am of the considered opinion that, prima facie, the applicants/accused have succeeded to bring their cases within the purview of further inquiry and as such are entitled to bail and for this

reason, the applicants/accused namely; **Gulab, Muhammad Yameen and Akram Ali** were admitted to bail subject to their furnishing solvent sureties in the sum of Rs.30,000/- each and P.R. Bonds in the like amount to the satisfaction of the trial Court, while the interim pre-arrest bail granted to the applicants/accused namely **Gamthar and Lakhmir**, vide order dated 03.03.2022, was confirmed on the same terms and conditions by my short order dated **16.5.2022**.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicants/accused misuse the bail, then the trial court would be competent to cancel their bail without making any reference to this Court.

Above are the reasons of my short order dated 16.05.2022.

JUDGE

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