

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 482 of 2020

- 1.For orders on o/objection.
- 2.For hearing of bail application.

Mr. J.K. Jarwar Advocate along with applicants.
Syed Mujahid Ali Shah Advocate for complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: 05-10-2020
Date of Order: 05-10-2020

ORDER

Aftab Ahmed Gorar J. Through captioned Crl. Bail Application, applicants Muhammad Sharif alias Multani, Fayaz, Ayaz, Nawab Khan alias Shahid and Muhammad Naeem seek pre-arrest bail in Crime No.73 of 2020, registered at P.S, Mehrabpur for the offences under Sections 452, 337A(i), 337F(i), 337F(vi), 114, 147, 148, 149 & 504 PPC. Earlier the bail plea of the applicants were declined by learned Additional Sessions Judge-1, Naushehro Feroze vide order dated 25.08.2020.

2. The allegation against the present applicants is that on 23.05.2020 at 1200 hours, they in association with three unidentified culprits, duly armed with weapons and lathies attacked upon the complainant party when they were available at their house, and on the instigation of applicant Muhammad Sharif alias Multani, applicant Fayaz Malik caused lathi blow to complainant hitting on upper side of his right eye, while other accused persons caused him kicks and blows.

Applicant Nawab Khan alias Shahid Maiak is alleged to have caused butt blow of his repeater to Mst. Asghari, mother of complainant on her right arm and other accused also caused her kicks and fists blows abused them. On the hue and cries of the complainant party, PWs Zeeshan Mughal and Nadeem Mughal and other people came there and rescued the complainant party from the hands of accused persons. Consequently, above FIR was lodged on 05.06.2020 at 1500 hours.

3. Learned counsel appearing on behalf of the applicants argued that the applicants are innocent and have falsely been implicated by the complainant in this case with mala fide intentions and ulterior motives; that there is inordinate delay of 13-days in lodgement of FIR, for which no plausible explanation has been furnished; that mere allegation of instigation is attributed to applicant Muhammad Sharif alias Multani, while the injuries alleged to have been caused by the applicants Fayaz and Nawab Khan to the complainant party, do not fall within the prohibitory clause of Section 497 Cr.P.C; that the applicants have never misused the concession of interim pre-arrest bail granted by this Court, as they are regularly attending the trial Court. Lastly, he prayed for confirmation of interim pre-arrest bail.

4. Learned counsel appearing on behalf of complainant opposed the confirmation of interim pre-arrest bail earlier granted by this Court on the ground that applicants are nominated in the FIR with specific role.

5. Learned Additional P.G concedes the confirmation of interim pre-arrest bail to the applicants except applicant Nawab Khan alias

Shahid as he is alleged to have caused butt blows of repeater to Mst. Asghari on her right arm, which resulted in fracture of her right arm.

6. Heard learned counsel for the parties and perused the material available on record meticulously. Insofar as the case of applicant Nawab Khan alias Shahid is concerned, perusal of FIR would reflect that he was armed with repeater and he is alleged to have caused butt blows of repeater to Mst. Asghari (mother of complainant) on her right arm and according to final Medicolegal Certificate, issued by WMO, Taluka Hospital, Kandiaro dated 05.06.2020, injury sustained by injured Mst. Asghari was declared as Jurh Ghayr Jaifa Munaqillah, which resulted in fracture of her arm. So far delay in lodgement of FIR is concerned, the same has plausibly been explained by the complainant as after the incident he immediately appeared at P.S, from where he obtained letters for treatment and after getting final medical certificates, he appeared at P.S and lodged the FIR. The applicant Nawab Khan alias Shahid has failed satisfy the Court with regard to condition of mala fide of his intended arrest, therefore, his case is not fit for grant of anticipatory bail. Accordingly, interim pre-arrest bail earlier granted to the **applicant Nawab Khan alias Shahid by this Court vide order dated 28.08.2020 is recalled to his extent and his bail application stands dismissed.** He is taken into custody and remanded to Central Prison-1, Sukkur with directions to produce him before learned trial Court on each and every date of hearing.

7. Insofar as case of applicants Muhammad Sharif alias Multani, Fayaz, Ayaz and Muhammad Naeem is concerned, mere role of

instigation is attributed to applicant Muhammad Sharif alias Multani, while injury alleged to have been caused by applicant Fayaz Malik with lathi to complainant has been declared as Shujjah Khafifah carrying punishment upto three years, whereas applicants Ayaz and Muhammad Naeem are stated to have caused fists and kicks blows to the complainant party. In view of above, I am of the considered view that the said applicants have succeeded to make out a case for confirmation of interim pre-arrest bail. Consequently, **interim pre-arrest bail earlier granted to applicants Muhammad Sharif alias Multani, Fayaz, Ayaz and Muhammad Naeem vide order dated 28.08.2020 is hereby confirmed on same terms and conditions.**

8. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided strictly on its own merits after recording evidence.

9. The captioned Crl. Bail Application stands disposed of in the above manner. Office is directed to send copy of this order to trial Court for information.

J U D G E

Ahmad