

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S – 199 of 2021

Date	Order with signature of Judge
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For hearing of bail application

26.04.2021

Mr. Wazir Ahmed Ghoto Advocate a/w Applicant
 Mr. Sohail Ahmed Khoso Advocate a/w Complainant
 Mr. Khalil Ahmed Metlo, DPG for the State

ORDER

Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicant/accused Meer Hassan S/o Khan Muhammad Bozdar, seeks pre-arrest bail in Crime No.49 of 2020 registered at Police Station Jarwar, District Ghotki, for offences punishable under Sections 337-A(ii), 504 and 34 PPC.

2. The facts of the prosecution case, in brief are that on 14.10.2020 complainant Niaz Hussain Bozdar lodged FIR at police Station, Jarwar, which allegedly took place on 05.10.2020, stating therein that there was dispute in between him and Meer Hassan Bozdar over the landed property. On the date of incident, he along with his brother Shoaib Hussain and Riaz Hussain were standing outside of his house, when it as 7:00 pm, there came present applicant Meer Hassan with hatchet, Ameer Hussain, Pervaiz Ahmed, with lathies. Out of them, accused Meer Hassan abused and caused backside hatchet blow to Shoaib Hussain which hit on his left side of

head, while rest of the accused caused lathi and fists blows to them. Thereafter the accused persons escaped away, hence such FIR was registered, as stated above.

3. The applicant on having been refused pre-arrest bail by the Court of learned 3rd Additional Sessions Judge, Mirpur Mathelo vide order dated 09.03.2021 hence he has sought the same from this Court by filing the instant Criminal Bail Application.

4. It is contended by learned counsel for the applicant/accused that there is delay of 09 days in lodgment of the FIR for which no plausible explanation has been furnished; that the medical evidence is in conflict with the ocular version, as in the FIR, the complainant has stated that the backside hatchet below was caused by the present applicant/accused to the victim Shoaib Hussain, whereas, in the medical certificate the seat of injury is shown on the right side; that the applicant/accused has challenged the medical certificate by filing an application to the Director General, Health Services Sindh, Hyderabad, which is pending; that the applicant/accused and the complainant are first cousins to each other and there exists dispute over the landed property; that there is malafide on the part of the complainant to involve the present applicant/accused in the commission of the offence, because the applicant/accused is serving in Pakistan Army and whenever he visits his village on leave, the complainant party manage false criminal cases against him; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C; that there is malafide on the part of the complainant to

involve the present applicant in a false case; that there is no independent eye-witness of the incident. He lastly contended that the applicant/accused has made-out a case for grant of pre-arrest bail on the point of further enquiry. In support of his contentions, he has relied upon the cases of ***Ghulam Muhammad alias Masood v. The State (2020 Y L R Note 56); Saeed Khan v. The State and others (2011 SCMR 1392); Ali Shah and another v. The State (2020 P.Cr L J Note 109) and Muhammad Aslam v. The State and others (2016 SCMR 1520)***

5. Learned counsel for the complainant opposed for grant of pre-arrest bail to the applicant/accused by contending that the specific role has been attributed to the applicant/accused in the commission of the offence, as at the time of incident he had hatchet and caused hatchet blow on the head of the injured Shoaib Hussain; that the delay if any occurred in lodgment of the FIR has been plausibly explained, therefore, the applicant/accused is not entitled for grant of extra-ordinary concession of pre-arrest bail. In support of his contentions, he has relied upon the case of ***Mashooq and another v. The State (2006 P Cr. L J 1798) [Karachi]; Mehboob and 3 others v. The State (2012 YLR 2337) [Sindh]; Mukhtiar Ahmed v. The State and others (2016 SCMR 2064) and Nasir and 3 others v. The State and another (2018 P Cr. L J 487) [Lahore];***

6. Learned Deputy PG appearing for the State recorded no objection for confirmation of the interim pre-arrest bail to the applicant/accused by contending that admittedly there is delay of 09

(nine) days in lodgment of the FIR and there is contradiction in the ocular as well as medical evidence; that as per FIR there is enmity between the parties over landed property; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C.

7. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant as well as Deputy PG for the State and perused the record. The FIR of the incident has been lodged with delay of about Nine (09) days and such delay having not been explained plausibly by the complainant could not be ruled-out, which appears to be significant. The allegation against applicant/accused in the commission of offence is that he has caused hatchet backside blow to the injured Shoaib Hussain on the left side of his head, whereas, as per medical certificate the same is on the right side of the head and the kind of weapon used was opined as a sharp cutting. The applicant/accused has challenged the medical certificate by filing an application to the Director General Health Services, Sindh Hyderabad, which is pending there. The offence with which the applicant/accused has been charged does not fall within the prohibitory clause of Section 497 Cr.P.C. In these circumstances, the applicant/accused is found entitled for grant of pre-arrest bail on the point of further inquiry. Consequently, the interim pre-arrest bail earlier granted to the applicant/accused vide dated 31.03.2021 is hereby confirmed on same terms and conditions. The applicant/accused is directed to regularly attend the trial Court till final disposal of the case. There is no cavil to the proposition laid

down in the case-law relied upon by learned counsel for the complainant, but it has no relevancy to the facts and circumstances of the case in hand. The observations made herein above are tentative in nature and will not prejudice the case of either party at the trial.

8. The instant bail application is disposed of accordingly.

Judge

ARBROHI