

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail Application No. S – 574 of 2020**

Date	Order with signature of Judge
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**For hearing of bail application**

1. For orders on office objection at flag 'A'
2. For hearing of bail application  
(Notice issued)

**19.10.2020**

Mr. Muhammad Rehan Khan Durrani Advocate for the Applicant

Mr. Ali Murad Malano Advocate for the complainant

Mr. Zulfiqar Ali Jatoi, Additional PG for the State

**ORDER**

**Aftab Ahmed Gorar, J-** Through instant Criminal Bail Application, the applicant/accused Daim S/o Allah Juriyo alias Allah Jiwayo Waso, seeks pre-arrest bail in Crime No.19/2020 registered at Police Station, Andal Sundrani, District Ghotki, for offences punishable under Sections 452, 337-A(ii), 337-F(i), 114, 147, 148, 149, 504 PPC PPC.

2. The facts of the prosecution case, in brief are that on 20.06.2020 complainant Arbelo Khan Waso lodged the FIR at police Station, Andal Sundrani in respect of the incident, which allegedly took place on 18.06.2020 at 05:00 pm, stating therein that there was dispute in between him and Daim Waso, hence they were annoyed. On the date of incident, he along with Abdul Karim, Hazoor Bux were available in the house, when at about 5:00 pm there came accused

Daim with lathi, Shafi Muhammad and Bakhshan with hatchets, Shahban with lathi and two unknown persons duly armed with weapons intruded in his house and hurled abuses and said that as to why you are not resolving the landed property. Out of them, accused Shafi Muhammad instigated other accused, hence on such instigation present applicant/accused Daim caused lathi blow to complainant on his head, accused Bakhshan caused backside hatchet blow on his right arm wrist; accused Shahban caused lathi blow on his left leg thigh, he caused cries, which attracted the co-villagers, hence the accused escaped away. Thereafter, such FIR was registered, as stated above.

3. The applicant on having been refused pre-arrest bail by the Court of learned 1st. Additional Sessions Judge (MCTC), Ghotki vide order dated 10.08.2020 hence he preferred the Criminal Bail Application No.S-433/2020. In the first instance the interim pre-arrest bail was granted to the applicant/accused vide order dated 11.08.2020 thereafter on 18.09.2020 the said bail application was dismissed for non-prosecution due to absence of the applicant/accused. Thereafter this second bail application has been preferred by the applicant/accused against on 08.10.2020 he was also granted ad-interim pre-arrest bail.

4. It is contended by learned counsel for the applicant/accused that the applicant/accused being innocent has been involved in this case falsely by the complainant party due to enmity over the landed property and such fact is admitted in the FIR; that there is delay of

two (02) days in lodgment of the FIR, for which no plausible explanation has been furnished; that there is counter-version of the present incident as the applicant/accused has filed the Criminal Miscellaneous Application under Section 22-A and 22-B Cr.P.C seeking direction for registration of his FIR, which was disposed of with direction to file direct complaint of the incident against the present complainant and others because in the incident three family members from the applicant/accused side namely two female namely Mst. Haleem, Mst. Zuhra and Bakhshan have also sustained injuries as the complainant party trespassed into the house of complainant for abducting Mst. Haleema for forcibly marriage; that it is yet to be determined at the time of trial that which party was aggressor; that the charge has been framed in the case before the trial Court but the complainant is avoiding to proceed with the matter; that the complainant did not appear before the Medical Board constituted for examining his injuries, hence the opinion of the Medical Board is kept in abeyance due to absence of injured/complainant; that there is malafide on the part of the complainant to involve the present applicant in a false case; that the offence does not come within the prohibitory clause of Sub-Section (2) of Section 497 Cr.P.C. He lastly contended that the applicant/accused has made-out a case for grant of pre-arrest bail on the point of further enquiry.

5. Conversely, it is contended by learned counsel for the complainant that the applicant/accused is nominated in the FIR with

specific role that he caused lathi blow to the complainant; that the delay in lodgment of the FIR has been properly explained; the applicant/accused has failed to point out any malafides for false implication of the applicant/accused; that the charge has been framed against the applicant/accused and now the case is fixed for evidence.

6. Learned Additional 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 enmity between the parties over landed property; that there is delay of two (02) days in lodgment of the FIR, which has not been properly explained; that though the complainant has sustained injuries, whereas, he did not appear before the Medical Board for his examination, as such the opinion has been kept in abeyance.

7. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant, learned Additional PG for the State and perused the record. The FIR of the incident has been lodged with delay of about two (02) 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 in the commission of offence is that he has caused lathi blow to the complainant, whereas, the complainant / injured did not appear before the Medical Board constituted for examining the injured sustained by him at the hands of the present applicant/accused, hence the opinion with regard to the injuries was kept in abeyance.

The offence with which the applicant/accused has been charged does not fall within the prohibitory clause of Sub-Section (2) of Section 497 Cr.P.C. There is also counter-version of the present incidence, as three family members from the applicant/accused side namely Mst. Haleema, Mst. Zuhra and Bakkhshan have also sustained injuries, therefore, it is yet to be determined at trial after recording evidence of the prosecution witnesses that which party was aggressor. 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 08.10.2020 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.

8. The instant bail application is disposed of accordingly.

Judge

ARBROHI