

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

CrI. Bail Application No.S- 318 of 2021

For hearing of Bail Application

Mr. Muhammad Ibrahim Gambhir Advocate for applicants.  
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.  
Syed Mehboob Ali Shah Advocate for Complainant.

Date of Hearing: **16-07-2021**

Date of short Order: **16-07-2021**

**ORDER**

**Muhammad Saleem Jessar J.** Through this bail application, applicants Sajid and Zubair both by caste Shaikh seek their release on post-arrest bail in Crime No.63 of 2021 of P.S, Pir-jo-Goth under Section 324 PPC.

2. After completion of investigation, case has been challaned, which is now pending for preliminary proceedings before the Court of Civil Judge & Judicial Magistrate, Pir-jo-Goth.

3. Applicants preferred bail application before the Court of Sessions Judge, which was subsequently assigned to Additional Sessions Judge-II, Khairpur Mirs, where after hearing the parties, their bail plea was declined by means of order dated 25.05.2021.

4. Since the facts of the prosecution case are already mentioned in the FIR as well as order passed by the Court below, therefore, there is no need to reproduce the same.

5. Learned counsel for the applicants submits that the FIR is delayed by about 24-days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. In support of his contentions, he placed reliance upon case of Muhammad Tariq v. The State **(2017 P.Cr.L.J Note 133)**. He further submits that alleged injured/victim was examined by the Medico-legal Officer on 02.04.2021, when provisional medical certificate was issued and subsequently final medical certificate was also issued on 06.04.2021 yet FIR was got registered on 26.04.2021. He next points out that per final medical certificate, injuries allegedly sustained by the injured/victim are bailable except injury No.3, which as per expert's opinion has been declared as "other hurts" to be punishable under Section 337L(2) PPC. In support of his contention, he submits Photostat copy of medical certificate, which is taken on record. Learned counsel further adds that 161 CrPC statement of injured/victim was recorded on 05.05.2021, which is delayed for about 11-days from the registration of FIR and about 40-days from the date of incident. He further submits that applicants have falsely been implicated by the complainant party due to some mala fide intentions as motive shown by the complainant in the FIR also has not been established by the prosecution.

6. Learned Deputy P.G for the State does not oppose bail application on the ground that offence is unseen, besides injuries

allegedly sustained by the injured/victim are not falling under prohibitory clause of Section 497 CrPC.

7. Learned counsel appearing on behalf of the complainant opposes bail application on the ground that applicants are nominated in the FIR, besides they had abducted victim, where they continued to cause him grievous injuries and the police did not register case under proper provision of law. He; however, could not controvert the fact that no any application was moved by the complainant before police hierarchy or court concerned for seeking directions to get the case registered as per offence they claimed.

8. Heard arguments and perused the record. Admittedly, incident has taken place on 02.04.2021, whereas FIR was registered on 26.04.2021 though the distance between place of occurrence is only  $\frac{3}{4}$  kilometres, yet prosecution did not furnish any plausible explanation for such an inordinate delay. Motive shown in the FIR is yet to be established by the prosecution after recording of evidence of the parties. Not a single piece of evidence has been collected by the police to show motive shown by the complainant or the reason for causing injuries to alleged victim/injured. Offence as shown is unseen and none had seen while it's happening. Only piece of evidence against the applicants is evidence of injured/victim who was examined under Section 161 CrPC on 05.05.2021 with the delay of 11-days from the registration of FIR and therefore such assertion is yet to be determined by the trial Court after recording evidence of the injured/victim.

Reference can be held form the case of Ayaz Ali and others v. The State **(2000 P.Cr.L.J 1031)**. In such circumstances, when there is no eyewitness of the occurrence except evidence of injured/victim, which is yet to be established by the prosecution before trial Court after recording evidence. Reliance can be placed upon case of Khalil Ahmed Soomro and others v. The State **(PLD 2017 SC 730)** and case of Muhammad Tanveer v. The State **(PLD 2017 SC 733)**.

9. The upshot of the above discussion is that the applicants have succeeded to make out a good prima facie case for further enquiry within meaning of subsection 2 of Section 497 CrPC. Hence, by short order dated 16.07.2021, instant bail application was allowed and the both applicants were admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/-(Fifty Thousand) each with P.R bond in the like to the satisfaction of Civil Judge/Judicial Magistrate, Pir-jo-Goth. These are the reasons in support of said short order.

**J U D G E**

Ahmad