

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-1305 of 2022.

Criminal Bail Application No.S-1306 of 2022.

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

26.12.2022.

Mr. Abdul Hameed Bajwa advocate for applicants in both applications alongwith applicants Muhammad Sultan and Muhammad Afzal present on interim pre-arrest bail in Criminal Bail Application No.S-1305/2022.

Ms. Sana Memon Assistant Prosecutor General.

Mr. Roshan Ali Azeem Mallah advocate for complainant.

O R D E R

MUHAMMAD FAISAL KAMAL ALAM, J.- Both the titled bail applications are decided by this common order, because both arise from the same FIR No.110 of 2022, of PS SF Rahu, in respect of offence under Sections 436, 435, 440 506(ii), 427, 504 & 35 PPC (Pakistan Penal Code).

Applicants/accused Muhammad Sultan and Muhammad Afzal both sons of Muhammad Ashraf are on pre-arrest bail, whereas the other three applicants/accused in Criminal Bail Application No.S-1306/2022 are in jail. Mr. Abdul Hameed Bajwa advocate for applicants has argued that the FIR is lodged out of sheer mala fide, due to the fact, that a civil dispute regarding the land is pending. He has referred to the pleadings of FC Suit No.16/2021 filed by the two applicants/accused Muhammad Ashraf and Pir Bux (behind bars) against the Province of Sindh and private persons. He has referred to his application under Order 1 Rule 10 of CPC, for impleading more defendants, which was allowed vide order dated 28.09.2022. He has stated that newly added defendants, particularly, Willayat Ali son of Bashir Ahmed is behind this criminal case. Contended that no one was injured in the alleged incident of burning down a wooden shop belonging to complainant Mukhtiar and there is an un-explained delay of four days in lodging the FIR on 28.10.2022 at 2130 hours, about the alleged incident on 24.10.2022 at 2100 hours, whereas Police Station is located at 8 kilometers from the purported crime scene. He further stated that perusal of Mashirnama of place of incident, which is signed by the prosecution witnesses Darho and Liaquat, show that they have connection with the above named Willayat Ali and Malik Fazal Khan. He has cited the case law reported as 2009 YLR 2104 Lahore [Bashir Ahmad versus The State].

Both bail applications are opposed by learned APG who argued that hatchet was recovered from the applicants/accused, coupled with the fact that one of the Sections in

the FIR, that is, section 436 PPC provides punishment of life imprisonment and thus falls within the prohibitory clause of Section 497 CrPC.

Arguments heard and record perused.

There is no criminal history of any of the applicants/accused. Undisputed record shows that in fact a civil dispute with regard to the land is pending in which Malik Fazal Khan and Willayat Ali have been impleaded as defendants, regarding which the PW has stated in Mashirnama of Place of the incident that land of above two persons is situated on the northern and eastern side of purported crime scene, which shows that these witnesses have some connection with the opponent side of present Applicants, thus require further probe. There is no plausible explanation that why the FIR was lodged after delay of four days when the Police Station was situated merely at a distance of 8 KMs from the place of incident. Investigation has been completed and Challan is submitted and none of the applicants are in a position to either interfere in the investigation or temper with the evidence. No useful purpose would be served by keeping the applicants/accused in jail. Admittedly, no injury is reported although it is stated by complainant that applicants/accused persons were armed with hatchets. One of the accused Muhammad Afzal is a student of Degree College Badin, as his student card is available on record and his career would be at stake.

Consequently, Criminal Bail Application No.S-1305/2022 is allowed and ad-interim pre-arrested bail granted to applicants vide order dated 01.12.2022 is hereby confirmed on the same terms and conditions. Similarly, Criminal Bail Application No.S-1306/2022 is also allowed and applicants are extended concession of post-arrest bail subject to furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) each and PR Bonds in the like amount to the satisfaction of learned Trial Court. It is clarified that observations made in the foregoing paragraphs are of tentative in nature and will not influence trial in any manner whatsoever. However if applicants/accused attempt to misuse the concession of bail, then the learned Trial Court shall pass necessary orders.

Announced on 30.12.2022.

J U D G E

Irfan Ali