

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Cr. Bail Appln: No.S-1150 of 2022

Applicant : Waqar Ali @ Waqar Son of Fakir
Muhammad Gopang through
Mr. Mumtaz Sachal Awan, Advocate.

Respondent : The State through Ms. Safa Hisbani
Assistant Prosecutor General Sindh.

Date of hearing : **09.12.2022**
Date of Order : **09.12.2022**

ORDER

MUHAMMAD SALEEM JESSAR,J- Through instant bail application, applicant / accused above named seeks pre-arrest bail in Crime No.28 of 2022, registered with Police Station, Hatri, under sections 147, 148, 149, 504, 114, 337-A(iv), 337-A(i) and 337-A(vi), PPC, after his bail plea was declined by learned Illrd. Additional Sessions Judge, Hyderabad vide order dated 03.03.2021.

2. The details and particulars of the case / incident are already available in the bail application and F.I.R, same could be gathered from the copy of F.I.R. attached with such application, needs not to reproduce the same hereunder.

3. Per learned counsel, the applicant / accused is innocent and has been falsely implicated in this case; that near about six accused persons allegedly attacked upon the complainant party and role assigned against the applicant / accused Waqar Ali @ Waqar is general in nature and no specific role has been assigned against him, therefore, he prayed for grant of bail. Learned counsel submits, co-accused Sohail @ Sohail Ahmed having identical role has already been granted post arrest bail by this Court on 12.11.2021 vide Cr. Bail Application No.566/22, he

places copy of said order, taken on record, therefore, rule of consistency is applicable in this case. In support of his contention, he places reliance upon the case of SHOUKAT ALI v. THE STATE (2001 MLD 696).

4. On the other hand, learned A.P.G appearing for the State opposes the bail application on the ground that name of the applicant / accused transpires in the F.I.R. with allegation that he along with co-accused with common intention attacked upon the complainant party, resultantly the complainant and his friend Tayab became injured, hence he is not entitled for grant of bail.

5. The complainant inspite of notice has chosen to remain absent.

6. I have heard learned counsel for the applicant as well as learned Asstt. P.G and have gone through the material available on record.

7. Admittedly, co-accused Danish @ Jani caused iron bar blow to complainant which landed on his head, whereas applicant Waqar and other co-accused Sohail, Rajab and Waheed were having lathies and hatchets in their hands and they jointly caused lathi blows to the complainant which landed on different parts of his body, therefore, no specific role of causing specific injury to complainant is assigned to the applicant except general role. Co-accused Sohail @ Sohail Ahmed Gopang has already been bailed out by this Court on 12.11.2021 vide Cr. Bail Application No.566/22, therefore, proprietary demands that constant treatment should be extended in his favour. No doubt, name of applicant / accused does find place in the F.I.R, but no specific role has been assigned against him, hence it is yet to be determined by the trial Court after recording evidence of prosecution witnesses whether the applicant has shared common intention along with co-accused or otherwise. It is settled law that at bail stage only tentative assessment is to be considered at bail stage and deeper appreciation is not permissible as held by the

superior courts. The applicant after furnishing surety before this Court has surrendered before the trial Court and no technical or legal purpose would be served, if the applicant is put behind the bars for an indefinite period, as tomorrow again he will be granted post arrest bail on the ground of rule of consistency. Reliance can be placed upon the case of MUHAMMAD RAMZAN v. ZAFAR ULLAH and another (1986 SCMR 1380).

8. Moreover, the complainant himself has admitted factum of quarrel between accused Qadir Bux and others, which resulted this alleged incident, hence malafide on the part of prosecution cannot be ruled out, therefore, basic ingredients for grant of pre-arrest bail, as has been laid down by the Hon'ble Supreme Court of Pakistan in the case of Rana MUHAMMAD ARSHAD v. MUHAMMAD RAFIQUE & another (PLD 2009 SC 427), are fully attracted in this case. Hence, the applicant deserves to be granted extraordinary relief in shape of pre-arrest bail.

9. In the light of above discussion and in view of the fact that no specific role is assigned against the applicant and co-accused has already been bailed out by this Court, the case against applicant requires further inquiry within meaning of sub-section 2 to Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicant on 31.10.2022 is hereby confirmed on same terms and conditions. The applicant present is directed to continue his appearance before the trial Court till final decision of the main case.

10. Needless to mention here that the observations made herein above are tentative in nature and will not prejudice the case of either party at the time of final decision.

JUDGE

g.

