

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Criminal Bail Application No.S-939 of 2022

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DATE            ORDER WITH SIGNATURE OF JUDGE

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10.10.2022

Mir Pervaiz Akhtar Talpur advocate for applicants.

Mr. Ahsan Gul Dahri, advocate for complainant.

Ms. Sana Memon, Assistant Prosecutor General.

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O R D E R

**MUHAMMAD IQBAL KALHORO, J.-** Complainant, a disciple of Shrine Luwari Sharif, Badin resides nearby it but does not see eye to eye with accused party on the issue of followership of said Shrine. There was birthday celebration of his Murshid. But the accused party, opposed to it were annoyed hence on the fateful day viz: 20.06.2022 they entered Otaq of complainant where such celebration was going on, in the company of 35 other co-accused duly armed with iron rods, lathies etc. Out of total 41 accused, 21 are named in FIR, 12 are shown unknown but later on through a further statement they have also been arraigned in the case by name. No sooner they came in the otaq than they started beating the people present in the celebration causing injuries to at least 15 persons. Each applicant has been identified with his specific role. Applicant Tariq Ahmed is said to have caused iron blow to Moula Bux on his head causing him an injury u/s 337A(iii) PPC non-bailable and punishable for 10 years. Applicant Abdul Qadir is said to have caused injury on the head of injured Fayyaz u/s 337-A(v) PPC non-bailable and punishable for 10 years. Applicant Raziqdino is saddled with a role of instigation while applicant Sohrab and Manzoor have been assigned general role of causing injuries to PW Abdul Raheem, Ghulam Sarwar and Ghulam Muhammad, the injuries are minor in nature and bailable.

2. Learned defense counsel submits that there is ongoing enmity between the parties for the last 40 years and they have registered several cases against each other in the past; accused party has also registered a counter FIR against the complainant

party in which 24 persons from their side were injured and injures are supported by the Medico Legal Certificates; applicant Tariq Ahmed was not available at the spot, as confirmed from the Call Data Record (CDR) of his phone; in counter cases which party is aggressor and which party is aggressed upon is always a question of further enquiry. To support his arguments he has relied upon the cases reported as 2021 MLD 2106 and 2022 SCMR 547.

3. On the other hand, learned counsel for complainant has opposed bail stating that applicants have been assigned specific role; even before incident they were issuing threats to the complainant party which went viral on social media and can be verified; since all the accused with their common intention assaulted complainant party, every accused is responsible for the offence conjointly and therefore they are not entitled to bail; the counter case has been manipulated only to defeat the operation of the present case and the story therein has been contrived.

4. Learned Assistant PG has opposed bail of applicant Tarique Ahmed and Abdul Qadir due to specific role assigned to them and has given no objection to the bail for remaining applicants.

5. I have considered submissions of parties and perused material available on record. The incident happened inside the Otaq of the complainant where, from the pictures submitted by the counsel for complainant, so many people can be seen to be available. The applicants party was consisting of 41 persons. In the mayhem ensuing in the wake of an assault, it would be prima facie difficult for a person to identify each person with his individual role and name him accordingly in FIR. Therefore, the role assigned to applicant Tarique Ahmed and Abdul Qadir in the circumstances requires further inquiry. Besides, there is a counter case, registered by the accused party in which 61 accused are named to have caused injuries to 24 persons. So, by this calculation, there were at least a hundred persons fighting with each other. Who was aggressor and who aggressed upon can be determined in the circumstances only after recording evidence. After the pre-arrest bail of the applicants was dismissed by the trial court, they were taken into custody on 24.07.2022, and are in jail since. The

challan has been meanwhile submitted and the applicants are no more required for further investigation. In view of such facts and circumstances, the case for grant of post arrest bail has been made out.

6. Accordingly, the application is allowed and applicants are granted bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (rupees one lac) each and PR Bond of the like amount to the satisfaction of learned trial court.

7. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE