

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-590, 594, 595 of 2023

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE</u>
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26.06.2023

Mian Taj Muhammad Keerio, advocate for applicants.

Mr. Muhammad Nawaz B. Jamali advocate for complainant.

Mr. Imran Ali Abbasi, Assistant Prosecutor General.

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MUHAMMAD IQBAL KALHORO, J.- These are three applications for post arrest bail. Complainant has alluded to a dispute in FIR with applicants after he purchased 144 acres of land from one Mst. Nasira through a sale agreement dated 01.01.2020. Applicant Ahsanullah is son of Mst. Nasira whereas other applicants are stated to be her harries/peasants.

2. According to learned counsel for complainant, after sale agreement, possession of the land was handed over to the complainant and he had started cultivating the same. However, the sale deed was not executed by Mst. Nasira because of pendency of some case before this court filed by her against previous owner in which stay was operating. She had however undertaken that as soon as the case was decided by this court, she would execute the sale deed in favour of complainant. As against it, applicant Ahsanullah would claim that he was in possession of the land and had filed criminal miscellaneous applications and civil suits to establish the same fact but which, per complainant's counsel, have all been dismissed.

3. Allegedly, on the day of incident viz. 01.04.2023 all applicants and co-accused, some of whom were unidentified, armed with deadly weapons came over the said land where the complainant had built one otaq and which they illegally occupied, confined harries of complainant and looted all the articles available there and mobile phones etc from the harries. In the incident, co-accused Anwer Sheedi fired from his gun hitting Mst. Najma on her thigh.

4. After registration of FIR investigation started, during which applicant Ahsan Ali and Muhammad Yousuf were arrested and from them a pistol and rifle respectively were recovered and against them separate cases u/s 23(1)(a) and 25 of Sindh Arms Act 2013 were registered, in which also the bail applications by the trial court have been dismissed.

5. I have heard the parties. Learned counsel for applicants submits that there is a dispute over agricultural land between the parties on the basis of which applicants have been implicated in this case falsely; no incident as alleged took place; complainant is not the eyewitness; the incident took place in the night time and source of identification has not been revealed; no recovery of incriminating article has been effected and this case requires further inquiry.

6. Complainant's counsel has opposed bail on the ground of recovery of robbed property and nomination of applicants in FIR. Learned Assistant PG has supported his arguments.

7. I have considered submissions of parties and perused material available on record. It is not disputed that there is an ongoing dispute between the parties over possession of the land, purportedly purchased by complainant from mother of one of the accused, which both parties are claiming to be with them and are approaching the courts to establish it. Complainant's claim of possession of the land is only under a sale agreement and up till now admittedly the sale deed has not been executed in his favour by Mst. Nasira. In FIR, it is alleged that accused had occupied the otaq of complainant but it has not been revealed anywhere in documents or by the complainant's counsel as to how the complainant regained possession of the otaq as he has admitted that currently complainant is in its possession.

8. According to him, as soon as FIR was registered, the accused fled away from the otaq but in the police papers no such document to support such fact is available, therefore this allegation requires further enquiry. Firearm Injury to Mst. Najma was caused by co-accused Anwer Sheedi who is not the applicant. Against applicants, the allegations of only occupying the otaq confining

harries/peasants of complainant and looting their belongings are leveled, which in view of above discussion, also require further inquiry.

9. In any case, the Challan has been submitted and applicants are no more required for further investigation. The confinement of applicants in the jail is not beneficial to the prosecution either. Plus the alleged offences do not fall within prohibitory clause u/s 497(1) CrPC. In the circumstances, I am of the view that the applicants have been successful in making out a case for post arrest bail. Accordingly, these applications are allowed and the applicants are granted post arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/ (rupees fifty thousand) each in each application and P.R Bond in the same amount to the satisfaction of learned trial court

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

JUDGE

Ali Haider