

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-183 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection
For hearing of main case

10.04.2023

Mr. Ayaz Ali Gopang advocate along with applicants.
Mr. Arif Ali Bhatti advocate for complainant.
Mr. Abdul Waheed Bijarani A.P.G. for the State.

MUHAMMAD IQBAL KALHORO,J- There is enmity between the parties over agricultural land and, therefore, they do not see eye to eye with each other. On the day of incident viz. 29.10.2022 applicants and other accused named in F.I.R duly armed with hatchets approached the complainant party when he was available in his house. Then at the instigation of co-accused namely Ghulam Hussain, they started beating the complainant party causing death of one person at least. Applicant Allah Jurio is said to have caused a hatchet blow on the head of PW Mir Aewaz causing him an injury under section 337-A(ii) PPC. Applicant Rasool Bux is said to have caused blow on head of Muhammad Sharif, who was also caused a sharp side hatchet injury by co-accused Din Muhammad on his head. Rasool Bux further is alleged to have caused injuries to PW Shoukat Unar. These injuries have been opined by Medico Legal Officer as 337-A(i) and 337-A(iii) PPC, the latter is punishable for ten years. Muhammad Sharif is said to have succumbed to injuries and died. The incident was reported on 06.11.2022 by the complainant with necessary details enclosed.

The case of applicants for bail, as argued by their counsel is that, the F.I.R. is delayed; no explanation has been forwarded by the complainant in this regard; initially N.C was registered on the day of incident in which no one is named. The said entry shows that the police along with complainant had gone to the spot on the very day, but the complainant did not name any person as accused there. Memo of incident does not show that complainant had implicated any person in the incident at that time. There is difference between ocular account and medical evidence. The ocular account says sharp side hatchet blows were caused to the victims, but the medical evidence depicts that hard & blunt side weapon was used for causing injuries to the victims. Learned defence counsel in support of his arguments has relied upon 2002 P.Cr.L.J.791, SBLR 2016 Sindh 713, 2022 P.Cr.L.J Note-33 and PLJ

2021 SC (Cr.C)-155. His arguments have been opposed by learned counsel for the complainant and learned Assistant Prosecutor General.

I have considered submissions of parties, perused the material available on record and taken guidance from the case law cited at bar. This application has been filed for relief of pre-arrest bail which is extraordinary in nature. Such relief is granted to the accused when on the face of record it is established that he has been implicated in the case falsely out of malafide by the complainant or the police. In this case, the applicants are nominated in F.I.R that they along with other co-accused came in front of house of the complainant where they attacked them, killed one person and injured as many as six persons. Applicant Allah Jurio and Rasool Bux both are saddled with the role of causing injuries to PWs. Besides, applicant Rasool Bux is assigned the role of causing injuries to the deceased. Learned defence counsel has argued that deceased received only one injury on his head, whereas two accused are made responsible for that injury, therefore, it is yet to be determined who caused the injury to him. It is pertinent to mention that the trial Court has stated in the impugned order that as per post mortem report of the deceased, the injury sustained by the deceased is crushed injury, which means that on the same part of head the deceased was repeatedly hit. This assertion does not seem to be predicated on assumption merely.

But, be that as it may, it is settled the benefit of difference, if any, in medical evidence and ocular account cannot be extended to the accused at the stage of bail as it requires deeper appreciation of evidence, which can be undertaken only by the trial Court after recording of the evidence. At the stage of bail, only tentative assessment of the material available on record is to be undertaken. From such an evaluation, it is apparent that applicants are prima facie connected with the alleged offence which carries capital punishment. They are named in F.I.R, have been assigned a specific role and apparently the place of incident which is the house of complainant where they had all gone together duly armed, the common intention on their part is also established prima facie. It is not a requirement of law that in NC registered only for limited purpose of issuing letter for medical treatment, the names of accused be mentioned, or if the names are not mentioned, it can be used to contradict F.I.R for the purpose of bail. No case for extraordinary concession of pre-arrest bail is made out in favour of the applicants. Accordingly this bail application is dismissed and ad-interim pre-arrest bail granted to the applicants vide order dated 27.02.2023 is hereby recalled.

The observations made hereinabove are tentative in nature and shall not cause prejudice to either party on merits before the trial Court.

J U D G E