

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.S-516 of 2023

(Iqbal Ahmed @ Muhammad Iqbal & others Vs. The State)

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For hearing of Bail Application

**20-10-2023**

Mr. Shabbir Ali Bozdar advocate for the applicants.

Mr. Ghulam Murtaza Korai, advocate for the complainant.

Syed Sardar Ali Shah Rizvi, Addition P.G for the State.

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**IRSHAD ALI SHAH - I:-** It is alleged that the applicants after having formed an unlawful assembly and in prosecution of its common object, caused lathi and iron rod blows to PWs Mumtaz Ali, Shoukat Ali, Jahangeer, Waliullah and Insaf Ali and then went away by insulting and threatening the complainant of murder, for that the present case was registered.

2. The applicants on having been refused pre-arrest bail by learned IIIrd Additional Sessions Judge, Ghotki, have sought for the same from this Court by way of instant application under section 498-A Cr.PC.

3. It is contended by learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant party in order to satisfy its dispute with them over matrimonial affairs; the FIR of the incident has been lodged with delay of about two days; there is counter version of the incident, therefore, the applicants are entitled to be admitted to pre-arrest bail, as they are apprehending their unjustified arrest at the hands of police. In support of his contention he relied upon case of *Muhammad Umar Waqas Barkat Ali Vs. The State and another* (2023 SCMR 330).

4. Learned Additional Prosecutor General for the State has recorded no objection to grant of pre-arrest bail to the applicants. However learned counsel for the complainant has opposed to grant of pre-arrest bail to the applicants by contending that one of the injury sustained by PW Mumtaz Ali has opined to Itlaf-i-Udw.

5. Heard arguments and perused the record.

6. The FIR of the incident has been lodged with delay of about two days; such delay having not been explained plausibly could not be overlooked; it is reflecting consultation and deliberation. The injury sustained by PW Mumtaz Ali which is said to be falling u/s 334 PPC as per medical opinion has been caused to him with some sharp cutting substance. It is contrary to the FIR, wherein it is alleged that all the injuries to him were caused with lathi or iron rod. On investigation, on acceptance of the version of the applicants a report u/s 173 Cr.P.C has also been furnished by the police against the complainant party before the Court having jurisdiction, which prima-facie suggests that there is counter version of the incident. Which party is aggressor and which party is aggressed upon? It requires determination at trial. Both the parties admittedly are disputed over matrimonial affairs. The case has finally been challaned. The applicants have joined the trial and there is no likelihood of their absconsion or tempering with the evidence. In these circumstances, a case for grant of pre-arrest bail in favour of the applicants on point of malafide obviously is made out.

7. In case of *Khalil Ahmed Soomro and others Vs. The State (PLD 2017 SC-730)*, the Apex Court has held that;

*"5. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years' imprisonment. All those aspects if are combindly taken, may constitute element of mala fide".*

8. In view of above, the interim pre-arrest bail already granted to the applicants is confirmed on same terms and conditions.

9. The instant bail application is disposed of accordingly.

**J U D G E**