

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

Cr. Bail Appl. No. S-1007 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection
For hearing of main case

16.10.2023

Mr. Bashir Ahmed Talpur, Advocate for applicants.

Mr. Siraj Ahmed Bijarani Assistant PG along with SIP Javed Ali Sathio
PS Talhar

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ORDER

ADNAN-UL-KARIM MEMON, J. Through this bail application, applicants Mehrab, Naveed and Ghulam Raheem seek post arrest bail in Crime No. 96 of 2023 registered at police station Talhar under Sections 324, 353, 147, 148, 149, 341, 337-H(ii), 337-A(i), 337-F(i) & 504 PPC.

2. The accusation against the applicants is that on 27.06.2023 they along with co-accused caused lathi blows to complainant on his left and right arms and also made aerial firing by extending threats of dire consequences. Such FIR was lodged. Earlier the bail plea of applicants was rejected by the trial court vide order dated 30.8.2023.

3. Learned counsel for the applicants argued that there are general allegations; no specific role is attributed to any of the applicants; there is conflict between ocular and medical evidence; the injuries allegedly caused are punishable under Sections 337-H(ii), 337-A(i), 337-F(i), PPC are not specifically attributed to any of the applicants / accused; that the applicants alleged malafide on the part of complainant / police.

4. Learned A.P.G. has opposed the bail plea of applicants, on the premise that they caused injuries to the complainant.

5. Heard counsel for the applicants and perused the material available on record.

6. At bail stage only tentative assessment of evidence is permissible and deeper appreciation cannot be gone into; and only it is to be seen whether the accused is prima facie connected with the commission of offence or not. The court is required to consider overwhelming evidence on record to connect the accused with the commission of offence and if the answer is in affirmative he/she is not entitled to grant even post and / or pre-arrest bail.

7. In the present case, the prosecution has applied different Sections of PPC, firstly Section 324 PPC is concerned, it is in an attempt to murder case falling within the ambit of Section 324, P.P.C., the nature of the act done, the intention of the offender and the circumstances leading to the occurrence are the essential ingredients, which need to be probed into to determine the guilt or otherwise of an accused. Even otherwise, if an accused person has a good case for post-arrest bail then merely at the wish of complainant he / she cannot be kept behind bars. On the aforesaid proposition, I am guided by the decision of Supreme Court in the case of *Khalil Ahmed Soomro vs. The State* **PLD 2017 SC 730**.

8. According to Section 337, PPC, six genres of “Shajjah” (injuries) have been depicted such as: (a) Shajjah-i-Khafifah; (b) Shajjah-i-mudihah; (c) Shajjah-i-hashimah; (d) Shajjah-i-munaqillah); (e) Shajjah-i-ammah; and (f) Shajjah-i-damighah.

9. The Supreme Court in the similar circumstances has dealt with the issue as involved in the present case. In the case in hand the applicants have been charged with Section 337-A(i) and 337-F(i). The punishment of Section 337-A(i) is arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term that may extend to five years as ta’zir, whereas the injury described in Section 337-A(i) is said to be shajjah-i-khafifah and the person accused of causing such injury is liable to arsh (compensation) which shall be ten percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to two years as ta’zir. Whereas another charge in the FIR is related to the offense under Section 337-F(i), which relates to the punishment of “Damiyah” such injury is liable to daman (amount of compensation determined by the Court) and may also be punished with imprisonment of either description for a term which may extend to one year as ta’zir; the offence 337-H(ii) relates to punishment of a rash or negligent act to endanger human life or personal

safety of others, under this clause is liable to Imprisonment of either description for 3 month. However, I do not want to comment on this aspect of the matter, lest it may prejudice the case of either party at trial if proceeded on merit. It is the trial court who after recording evidence would decide about the guilt or otherwise of the applicants and as to whether Sections 337-F(i), 324 PPC is applicable or not.

10. The Supreme Court in the recent case has held that the law of bail under Section 497 Cr.P.C, wherein it is provided that a person shall not be released on bail if there appears reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years, though all the offenses do not fall within the prohibition contained in Section 497 Cr.P.C,

11. The essence of the above discussion is that the applicants have succeeded in making the case for post-arrest bail, hence, this bail application is allowed subject to their furnishing of surety in the sum of Rs.50,000/- (Rupees fifty thousand) each with P.R bond in the like amount to the satisfaction of trial Court.

12. Needless to mention that any observation made herein-above are tentative and shall not influence the trial court in any manner.

JUDGE

Ali Haider