

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-529 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on office objections.
For hearing of main case.

05.07.2023.

Mr. Pervaiz Tariq Tagar advocate for Applicant.

Mr. Imtiaz Ali Abbasi advocate for complainant.

Ms. Safa Hisbani Assistant Prosecutor General, Sindh.

Complainant is present in person.

ORDER

MOHAMMAD ABDUR RAHMAN, J: This is an application under Section 497 of the Code of Criminal Procedure, 1898, that has been maintained by the Applicant, seeking bail after arrest in Crime No.75 of 2023 registered under Sections 324, 114, 147, 148, 504, 337-A(i), 337-F(i) of the Pakistan Penal Code, 1860, at Police Station Sehwan, District Jamshoro.

2. The facts of this application are not really disputed. Initially one of the co-accused Ali Gohar filed an application under Section 22-A (6) (i) of the Code of Criminal Procedure, 1898, for the registration of an FIR against Muhammad Fazul, Rashid Ali, Naveed Ali, Ghulam Akbar, Mushraf Ali, Kazbano, Saima and Razia on the basis that they were trying to trespass on an immovable property. The said application was dismissed.

3. Thereafter, on 30 April 2023 the present incident took place over the ongoing dispute as between Muhammad Fazul (hereinafter referred to as the "Complainant") and the Applicants in respect of the same immovable property situated at Miyani Areesara near Bubak, Deh Fazlani Sehwan. On the said date it is alleged that Applicant, along with the other co-accused, was involved in an incident with the Complainant and his sons whereby the Complainant and his sons were subjected to a physical attack resulting in them being injured and in respect of which an FIR was registered where the Applicants and the Co-accused were in that FIR assigned the roles as indicated below:

S.No.	Name of accused	Role assigned
1.	Ali Gohar	Armed with a pistol shot at the Complainant which missed and thereafter grabbed a Hatchet from Gul Hasan and hit the Complainant on the head with the Hatchet. Ali Gohar also instigated all the others to attack the Complainant party and kill them
2.	Abdul Razzaque	Carrying a hatchet hit the Complainant on the head with the Hatchet but which the Complainant blocked with his arm causing the hatchet to hit the Complainant on his arm
3.	Gul Hasan	Having a Hatchet
4.	Tarique Ali	With an iron rod hit the Complainant son Rashid on his left arm
5.	Sarfaraz	Carried a hatchet and at the end of the incident attacked the Complainant and his sons
6.	Nabi Bux	With a Lathi at the end of the incident attacked the Complainant and his sons
7.	Mashooque	With a Lathi and at the end of the incident attacked the Complainant and his sons
8.	Habibullah	With an Iron Rod attacked the complainant son Naveed

In summary the incident resulted in physical injuries being inflicted on the Complainant by the co-accused Ali Gohar and Abdul Razzaq and by the Applicant Habibullah on the son of the Complainant i.e. Naveed, and by Tariq to another son of the Complainant i.e Rashid. The Injuries to the Complainant and his sons have been verified by Medico-Legal Officer and corroborate the narration that has been made by the Complainant in the FIR

3. An Application under Section 497 of the Code of Criminal Procedure, 1898 was filed before the Additional Sessions Judge Sehwan bearing Criminal Bail Application No.487 of 2023 and which was dismissed by that court on 18 May 2023.

4. Counsel for the Applicant argued that the grounds for bail necessitated a further inquiry as evidence has been brought on record that female members of the family of Applicant and Co-accused were also injured during the incident that occurred on 30 April 2023. He further stressed that the role assigned to the Applicant is that of having hit one Naveed Ali on head with an iron rod to commit his murder and which he insists is not a vital part of the body from which intention to commit murder can be ascertained. He relied upon the decisions reported as ***Muhammad Ijaz vs. The State***¹ to show that where the crime is coming with the purview of Section 337 F(vi) of the Pakistan Penal Code, 1860 the offence will not come within the prohibitory clause of Section 497 of the Code of Criminal Procedure 1898. He also relied on the decision reported as ***Muhammad Faisal vs. The State***² where in an offence falling under Section 337 F(vi) of the Pakistan Penal

¹ 2022 SCMR 1271

² 2020 SCMR 971

Code, 1860 and in which the declaration of injury was made after eight months the case was deemed to be one of a further inquiry and bail was granted. He finally relied on a decision reported as **Zubair Hussain vs The State**³ where in an offence inter alia involving Section 337 F(vi) of the Pakistan Penal Code, 1860 bail was granted.

5. Learned Assistant Prosecutor General and learned counsel for complainant both have argued that the FIR was lodged without any delay; that the incident that occurred has been corroborated by Medico-Legal Officer; that hitting somebody with an iron rod cannot be considered as assault on a part of body which is not a vital organ. They stressed that the offence is one which comes within the prohibitory clause and bail not being a right, hence this Application should be dismissed.

6. I have heard learned counsel for the parties and perused the material available on record. It is noted that the Challan has been submitted and the version mentioned in the FIR has been substantiated by the Medico Legal Officer confirming the role of the Applicant. I cannot agree with the suggestion of the counsel for the Applicant that assault on the head of a the Complainant with an iron rod cannot be considered as an attack on a vital organ of victim. Such an offence is non-bailable and falls within the ambit of prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898 and the incident shows that the Applicant was actually the instigator of the offence leading me to conclude that this is not a case involving a further inquiry and for which reasons I had dismissed this bail application on 5 July 2023 and these are the reasons for that order. Needless to say, the observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE

Hyderabad Dated 4 August 2023

Irfan Ali

³ 2004 PCrLJ 604