

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

Cr. Bail Application No.S-157 of 2023

Applicants: Habib-u-Rehman & others,
Through Mr. Aziz Ahmed Laghari,
Advocate.

Complainant: Abdul Sattar Panhwar
present in person.

The State: Through Mr. Shawak Rathore,
Deputy Prosecutor General.

Date of Hearing: 10.07.2023
Date of Order: 10.07.2023

ORDER

ARBAB ALI HAKRO, J.- Through this bail application under Section 497 Cr.P.C., the applicants/accused Habib-u-Rehman, son of Bassar; Ali Sher, son of Rasool Bux; Ashraf, son of Bassar; Parvez, son of Soomar and Shah Zaman, son of Hashim, seek admission to post-arrest bail in Crime No.39 of 2022 registered against them on 14.6.2022 at P.S. Nindo, District Badin, under Sections 324, 506(2), 337-A(i), (ii), 337-D, 337 F(i), (ii), (iii), (iv), (v), (vi), 504, 147, 148, 149, 114 P.P.C. The applicants / accused had previously applied for post-arrest bail before the trial Court in Sessions Case No.714 of 2022; the same was dismissed by the learned II-Additional Sessions Judge, Badin, vide order dated 09.02.2023. After that, applicants/accused approached this Court.

2. Briefly stated, the accusation against the applicants is that they, along with their co-accused, armed with hatchets and batons,

perpetrated a violent assault on the complainant group. As a result of the hatchets and baton strikes inflicted by the applicants and co-accused, five individuals from the complainant party sustained injuries in various parts of their bodies.

3. At the very outset, it has been contended by the learned counsel for the applicants that the applicants have been falsely roped in this case against the facts and circumstances. He argued that the crime report was lodged after a delay of five hours for which no plausible explanation has been given. It contends that there are general allegations against all the applicants except applicant Shahzaman. He further argued that no independent witness is cited in the case, and all the witnesses are interested, and there is no previous criminal record of the applicants.

4. On the other hand, learned Deputy Prosecutor General opposed the bail application and contended that this Court dismissed earlier pre-arrest bail of applicants. He argued that there is a criminal record of applicants/accused, and they are narcotic paddlers. He further contends that applicants duly armed with hatchets and lathis attacked the complainant party with the motive of murder, and all the applicants shared their common intention and a specific role is also assigned to applicant Shahzaman. Lastly, he prayed dismissal of a bail application.

5. I have heard learned counsel for the applicants and learned Deputy Prosecutor General and have carefully examined the material available on record. The record shows that initially, the applicants applied for pre-arrest bail in the Court of 2nd Additional Sessions

Judge, Badin, which was declined vide order dated 19.07.2022. After that, they approached this Court and were granted interim pre-arrest bail, but the same was not confirmed and thus dismissed on 05.09.2022. The available documentation additionally indicates that after this Court dismissed their bail, the applicants proceeded to submit a bail application before the Apex Court, which similarly met with dismissal. Subsequently, the applicants were apprehended by law enforcement officials.

6. In this case, I have noted that the occurrence occurred on 14-06-2022 at 1900 hours, whereas the matter was promptly reported to the police on the same day at 23:30 hours. Promptness in reporting the matter to the police reflects that there is no chance of any consultation or deliberation on the part of the complainant.

7. The main thrust of contentions of the learned counsel for the applicants is that it is a case of individual liability, and each of the applicants is to be treated according to the role ascribed; it is worth mentioning that in criminal matters, each case has its own facts and circumstances. In the instant case, ten accused persons in number, in furtherance of their common object, inflicted hatchet blows injuries to the complainant and P.W.s. Consequently, the instant occurrence has occurred. Section 149 PPC has laid down the principle of constructive liability whereby if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, all those who, at the time of the committing of that offence, would be equally guilty of that offence. In order to constitute an offence under section 149 P.P.C., it is not required that a person should necessarily perform any act by his own

hand; rather, the common object presupposes prior concert and requires a prearranged plan. If several persons had the common object of doing a particular criminal act, and if, in furtherance of their common object, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act. However, if he helps by his presence or other acts in the commission of an act, he would be held to have himself done that act within the meaning of section 149 PPC. In this context, I am fortified by the case of **Ahtisham Ali v. The State (2023 SCMR 975)**.

8. The applicants are nominated in the crime report with the specific allegation that they, along with the rest of the accused, after having formed an unlawful assembly and in the prosecution of their common object, caused hatchet injuries to four P.W.s, including the complainant namely Abdul Sattar, Suleman, Asif, Mst. Nawab Zadi and Nawaz Sharif on their heads and other parts of bodies; all the applicants have also been named by the P.W.s, including the above-named injured P.W.s, in their statements under section 161, Cr.P.C.; medical evidence is in line with the ocular version. The case of applicants falls within the ambit of the prohibition contained in Section 497(2), Cr.P.C. Sufficient incriminating material is available on record, which connects the applicants with the commission of the alleged offence.

9. No doubt the considerations for grant of pre-arrest bail are entirely different from that of post-arrest bail as far as the additional grounds of "*humiliation*", "*harassment*", "*malafides*", "*ulterior motive*", "*intention to disgrace and dishonor*" are concerned. But once the merits

of the case have been considered by this Court as well as Apex Court exhaustively while deciding pre-arrest bail of the Applicants/accused (as happened in this case), this Court cannot express another view contrary to the observations of this Court as well as Apex Court with regard to the merits of the case. In similar circumstances, in Case of **Muhammad Khan v. The State (2005 P.Cr.L.J. 1797)**, Lahore High Court observed that “*It is well-settled if pre-arrest bail is declined on merits and not simply on account of lack of malafides, then post arrest bail can also not be granted*”. Similar view has been taken in Case of **Mian Saghir Ahmed and another v. The State (2005 P.Cr.L.J. 654)**.

10. Technically, it may be true that dismissal of a pre-arrest bail application was no bar for the grant of a post-arrest bail plea but it will be noticed that for grant of bail before arrest the conditions contemplated under section 497, Cr.P.C. need to be satisfied and in addition thereto, the requirement of malice should also be satisfied. In the matters of grant of post-arrest bail, however, malice is no condition precedent. The inference thus is that, if pre-arrest bail had been declined on account of non-fulfilment of the requirements of malice, only then grant of bail after arrest on merits by a lower Court would perhaps be not in violation of any command of law or propriety. But if a superior Court has already dismissed a pre-arrest bail petition by considering the merits of the case then of course the lower Courts shall stand precluded from accepting the post-arrest bail petition of the said accused person.

11. In view of the above, I am of the considered view that the applicants have failed to make out a prima facie case for a grant of

post-arrest bail on merits. Accordingly, the bail application is dismissed.

12. Needless to add, the observations made hereinabove are tentative in nature only to decide this bail application, which shall not in any manner influence the trial court at the time of final decision of the subject case. However, the trial Court is directed to conclude the trial expeditiously.

JUDGE

Shahid