ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1666 of 2023

Date	Order with signature of Judge

For hearing of bail application

31.8.2023

Mr. Imdad Ali Malik advocate for the applicant alongwith applicants
Hafiz Sharifullah advocate for the complainant alongwith complainant
Mr. Talib Ali Memon, Assistant P.G

Through this bail application under Section 498 Cr.P.C., the applicants have sought admission to pre-arrest bail in F.I.R No.778/2023, registered under Section 147/148/149/337-A(i)337-F(ii) PPC at Police Station Sachal, Karachi.

2. The accusation against the applicants, as narrated in the crime report, is that the complainant went to the Union office where 2/3 unknown persons including accused Naseem and Ghani, who were holding sticks and iron rods, accused Naseem and Ghani were also holding sticks in their hands and started beating the minor sons of the complainant namely Muhammad Ali, Muhammad Asif, Muhammad Younis, Ali Muhammad, without any rhyme and reasons; and were referred to JPMC Karachi for treatment and Medico-Legal Office opined the injuries as Jurh Ghayr-jaifah badi'ah and damihah. Such report of the incident was given to Police Station Sachal, Karachi, who registered the F.I.R No.778/2023, under Section 147/148/149/337-A(i) 337-F(ii) PPC. The previous pre-arrest bail application of the applicants was declined by the learned Additional Sessions Judge-VI Malir Karachi in Cr. Bail Application No.2982/2023.

3. The applicants being aggrieved by and dissatisfied with the aforesaid bail declining order have approached this Court.

4. At the outset, Mr. Imdad Ali Malik, learned counsel for the applicants referred to the statement dated 31.08.2023 and submitted that Raheemuddin applicant No. 1 has been let off by the Investigation officer in the charge sheet and he does not press the bail application to the extent of Raheemuddin applicant No.1. Such statement has placed on record.

5. It has been argued by learned counsel for the applicants that the applicants have falsely been roped in this case against the facts and circumstances of this case due to mala fides of the complainant in connivance with local police. He further contends that the FIR was

registered after a delay of three days for which no plausible explanation has been given and the same shows deliberation and consultation on the part of the complainant. He next argued that the complainant party was the aggressor and in the incident, the applicant party had also sustained injuries on their bodies which were suppressed even though the applicants immediately approached the Police for registration of FIR No. 768/2023, however, the cross-version was registered vide F.I.R No.778/2023. He next argued that the applicants were also medically examined on the same day and the factum of receiving injuries on their person has been proved. He contends that the offense under section 337-A(i), P.P.C. is bailable whereas the offense under section 337-F(ii), P.P.C. does not fall within the prohibitory clause of section 497, Cr.P.C., therefore, the applicants deserve the concession of pre-arrest bail. He further submitted that the complainant continuously harassed and humiliated the applicants as well as extended threats of dire consequences and lodged the false FIR against the applicants as counterblast of F.I.R No. 768/2023 lodged by the applicant party as the applicants did not commit the alleged offense as portrayed by the complainant. He next argued that the possibility of implicating the applicants in the instant case with mala fide intention cannot be ruled out. He further submitted that in these circumstances, a prima facie doubt has arisen regarding the authenticity of the prosecution's case. He next argued that the benefit of the doubt, if established from the record, can be extended even at the bail stage. Learned counsel stressed the point that all these circumstances conjointly suggest that the case of the applicants squarely falls within the purview of section 497(2), Cr.P.C. entitles the applicants to further inquiry into their guilt and it is the Trial Court who after the recording of evidence would decide about the guilt or otherwise of the applicants. In support of his contentions, he relied upon the case of *Muhammad Ijaz vs. The State* (**2022 SCMR 1271)** and prayed for allowing the bail application of applicants No.2 and 3.

6. Hafiz Sharifullah learned counsel representing the complainant has refuted the stance of the applicants on the plea of cross-version and strongly defended the impugned order whereby pre-arrest bail was declined to the applicants by contending that the applicants have specifically been nominated in the crime report with a specific accusation of causing grievous injuries to the complainant's minor sons, therefore, they do not deserve any leniency by this Court. Learned counsel emphasized that the mere existence of a cross-version is not a valid ground for holding the case one of further inquiry to grant bail to the applicants under Section 497(2), Cr.P.C. unless it is supported by

the material available on the record of the case; and, on tentative assessment of material available on record, prima-facie suggest the involvement of the applicants, who caused serious/grievous injuries to the minor sons of the complainant and it is very difficult to determine the version of the applicants to be true as the injuries sustained by the complainant party is sufficient to hold them guilty of the alleged offenses as they have failed to prove malafide on the part of the complainant to book the applicants in the aforesaid injury case. Learned counsel referred to the judgment of Supreme Court and argued that when a Court cannot decide even tentatively, at bail stage, such culpability of a party on the basis of material on record of the case, it leaves this matter for determination on conclusion of the trial after recording the prosecution evidence and the defence evidence, if produced, and gives the benefit of the requisite further inquiry to both parties by granting them bail under section 497(2), Cr.P.C. in such a situation, if the Courts start considering every case involving a cross-version as one of further inquiry without any tentative assessment of the worth of the cross-version, it can encourage an accused to concoct a false or fabricated cross-version so as to bring his case within the ambit of further inquiry and thereby get bail, that is why the Courts are to make a tentative assessment of the material, if any, available on record of the case in support of the cross-version at bail stage and should not readily accept it as a valid ground to treat the case one of further inquiry under Section 497(2), Cr.P.C. Per learned counsel, the version of the complainant party is supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence and recoveries of the alleged weapons of offence are yet to be effected as such no extraordinary circumstances are available to thwart the investigation process. Learned counsel argued that the trial Court has rightly declined bail to the applicants while touching the issue and the cross-version of the applicants. In support of his contention, the learned counsel for the complainant has relied upon the cases of *Abdul Manan vs. The State* **2023 P. Cr. L.J 73**, and *Syed Gul vs. The State* **2022 P. Cr. L.J Note 119**. He prayed for the dismissal of the bail application.

7. Learned Assistant P.G. has adopted the arguments of the learned counsel for the complainant and submitted that the learned trial Court has rightly dismissed the bail plea of the applicants. It has been contended that it is a settled principle of law that in such cases the statement of the victim itself is sufficient for proving the charge against the accused. Therefore, they do not deserve any leniency by this Court.

8. I have heard learned counsel for the parties and perused the material available on record.

9. The instant case is stated to be a cross-case of FIR No.768/2023. It would be appropriate to mention here the facts of the said FIR is that the complainant/applicant No.1 Abdul Raheem lodged FIR No. 768/2023 with Police Station Sachal on 03.07.2023 with the narration that on 02.07.2023 accused Muhammad Ali, Muhammad Yousuf, and Ashraf came at the place of incident and started abusing him, and started beating him and in result, he received multiple injuries on his body, however, they managed to escape away from the place of the incident by issuing threats of dire consequences. The charge sheet of the aforesaid crime was submitted by the police on 26.07.2023 under Section 147/148/149/506, 337-A (i) 337-F(I) PPC before the competent Court of law in which the complainant party obtained bail before arrest from the trial Court. Thereafter the present complainant succeeded in lodging the counter version vide FIR No. 778/2023 with the same P.S on 05.07.2023 under Section 147/148/149, 337-A(i) and 337(ii) PPC, and now both the cases have been challaned before the competent of law.

10. 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-damihah.

11. 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(ii) i.e. Jurh Ghayr-jaifah badi'ah and damihah. 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 set 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(ii), which relates to the punishment of "Ghayr-jaifah" which means an injury in which the skin is ruptured and bleeding occurs and a person causing such injury under this clause 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.

12. 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 appear to be 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, however in pre-arrest bail this Court is only required to see the ulterior motives and malafide of the complainant and police and will also tentatively assess the material and can also touch the merits of the case so far as the allegations contained in the F.I.R, nature of injuries, medical evidence if available and statement of PWs and other material points available on the police file.

13. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into the merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only 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 the offense and if the answer is in the affirmative he/she is not entitled to grant even post and/or pre-arrest bail.

14. As far as the point raised by the defense counsel that the complainant party has been bailed out in the F.I.R lodged by them prior in time; and the similar treatment be provided to the applicants. The concept of equal justice requires the appropriate compatibility of roles and overt acts attributed to the offenders, but in case of difference or disparity in the roles due allowance cannot be extended to the co-offenders on the perspicacity that different sentences may reflect different degrees of culpability and or different circumstances.

15. The second point raised by the learned counsel for the applicants is that all offenses of the above nature are punishable by way of imprisonment which does not fall within the prohibitory part of section 497, Cr.P.C. and when the applicants are entitled to bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone, while on the other hand, they are likely to be humiliated and disgraced due to arrest at the hands of the local police. He has further argued that if the accused is entitled to post-arrest bail, pre-arrest bail cannot be declined. The law on the subject is very clear and considerations for pre-arrest bail are different from that of post-arrest bail. Pre-arrest bail is an

extraordinary relief, whereas post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is the duty of the accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens, who have been involved in heinous offences with malafide and ulterior motives. Merely saying that all offenses of the above nature are punishable by way of imprisonment, which do not fall within the prohibitory part of Section 497, Cr.P.C. and their prayer for pre-arrest bail, if declined, would be a matter of technicality alone is erroneous point of view of the applicants in terms of the decisions of the Supreme Court in the case of *Muhammad Sadiq and others v. The State* (**2015 SCMR 1394**) and *Bakhti Rehman Vs. The State* (**2023 SCMR 1068)**.

16. The third ground of the applicants to seek pre-arrest bail is that there were/are two versions and thus, the applicants be admitted to pre-arrest bail. As far as the principles governing the grant of bail in 'cross cases' are concerned, the judicial consensus, depends on the peculiar facts and circumstances of each case. The Supreme Court in the case of *Mst. Lubna Bibi vs. Azhar Jawed Abbasi* (**2022 SCMR 946)** has held that the mere existence of a cross-version is not a valid ground for holding the case one of further inquiry to grant bail to the accused under Section 497(2), Cr.P.C. unless it is supported by the material available on the record of the case; and, on tentative assessment of material available on record, prima-facie suggest the involvement of the applicants, who caused serious/grievous injuries to the minor sons of the complainant and it is very difficult to determine the version of the applicants to be true as the injuries sustained by the complainant party is sufficient to hold that there are no reasonable grounds to believe that they are not for guilty of the alleged offenses as they have failed to prove malafide on the part of the complainant to book the applicants in the aforesaid injury case.

17. Prima-facie, the version of the complainant party is supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence supports the case of prosecution and recoveries of the alleged weapons of offense i.e. sharp and hard blunt substance is yet to be effected as such no extraordinary circumstance are available to thwart the investigation process because of the counter version.

18. No specific details of any mala fide intention or ulterior motives have been alleged in this case. The complainant explained all the facts of maltreatment, cruelty, and harsh attitude by the applicants. The case

of further inquiry pre-supposes the tentative assessment which may create doubt concerning the involvement of the accused in the crime. Sufficient material is present to demonstrate the applicant's involvement in the case without any reasonable doubt

19. The Supreme Court in the case of *Ahtisham Ali vs. the State* (**2023 SCMR 975)** has held that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. The Supreme Court has laid down the following parameters for pre-arrest bail:-

> ***(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;***
>
> ***(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;***
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> ***(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;***
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> ***(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;***
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> ***(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;***
>
> ***(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.***

20. In the case of *Rana Abdul Khaliq v. The State and others* (**2019 SCMR 1129**), the Supreme Court held that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens. It was further held by the Supreme Court that

the exercise of this power should be confined to cases in which not only a good prima facie ground made out for the grant of bail in respect of the offense alleged.

21. In the wake of the above discussion, prima facie, no case for pre-arrest bail is made out in terms of the ratio of the judgments rendered by the Supreme Court as discussed supra, therefore, the Criminal bail Application is dismissed and interim order dated 27.7.2023 is recalled. It is expected that the trial Court shall endeavor to examine injured witnesses within one month and if the charge is not framed the same shall be framed on the next date of hearing. Compliance shall be made accordingly within time.

22. The observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

Shahzad