

# THE HIGH COURT OF SINDH KARACHI

**Cr. Bail Appl. No. 1842 of 2023**

**Cr. Bail Appl. No. 1840 of 2023**

For hearing of Bail Applications.

Bail Appl. 1842/2023 : Muhammad Musharaf son of Muhammad Gufran and Muhammad Naeem son of Muhammad Musharaf.

Bail Appl. 1840/2023 : Mst. Farah Naz d/o Muhammad Musharaf and Muhammad Ali son of Muhammad Musharaf, both the Applicants are present in Court on ad-interim pre-arrest bail.

For the Applicants : M/s. Shahzad Mahmood and Asfand Yar Khan Advocates.

For the Complainant : Mr. Muhammad Nawaz Advocate, alongwith the Complainant, Sobia Zulfiqar wife of Zulfiqar Ali

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Date of hearing : 28-09-2023

Date of order : 28-09-2023

*FIR No. 899/2023  
u/s: 337-A(i), 337-F(i), 337-A(iii),  
354, 34 PPC  
P.S. SSHIA, Karachi*

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The applicants/accused of Criminal Bail Application No. 1842/2023 seek post-arrest bail in the aforesaid crime; whereas the applicants/accused of Criminal Bail Application No. 1840/2023 seek pre-arrest bail in the same crime.

2. The complainant and the accused are family members and reside in the same house. The accused Muhammad Musharaf is the father-in-law of the complainant. The accused Muhammad Naeem, Muhammad Ali and Farah Naz are respectively the brothers-in-law and sister-in-law of the complainant.

3. Per the complainant's narrative in the FIR lodged on 03-08-2023, the accused were not happy with the complainant's husband for having married the complainant and time and again demanded that he should leave her; that on 21-07-2023, after an heated exchange of words, the accused attacked the complainant's husband; that when she intervened, she too was given a beating by the accused inflicting serious injuries to her nose and head and violated her modesty before they fled the house; that the complainant was taken to the hospital, and on recovery she came to lodge the FIR. The final report of the MLO, dated 27-07-2023, was that the complainant suffered an un-displaced fracture of the nose and some swelling, the injuries being classified as *shajjah-i-hashimah* and *shajjah-i-khafifah*.

4. Heard learned counsel, the APG Sindh and perused the record.

5. The accused have a counter-version of the events leading to the complainant's injury. They have averred that the complainant and her husband were not getting along with the accused, all residing in the same house; that on the given day, the accused Muhammad Musharaf, as elder of the family and owner of the house, expressed that he intended to disinherit the complainant's husband from the house; over this, the complainant and her husband were enraged and attacked the accused Muhammad Musharaf; that when the complainant came at him with a stick, she was pushed away by her husband and fell face-down on the floor and that is how she received the injury; and that it was the accused who themselves took the complainant to the hospital.

6. The FIR did not assign separate roles to the accused, rather attributed injuries generally to all of them. As per the challan also, on investigation the complainant could not say which of the accused hit her on the nose, which of them hit her on the head, and who violated her modesty. The report of the MLO did not opine on the cause of the injury. The investigation revealed a dispute between the parties over

the house. There is no report of injury suffered by the complainant's husband who was allegedly also attacked by the accused. The delay of 12 days in lodging the FIR with the addition of an offence under section 354 PPC while stating that the accused had fled their own house, make the complainant's version of the events doubtful. Given these facts, the counter-version of the accused that the injury of the complainant was the result of a fall as aforesaid which was not caused by the accused, appears to be more plausible or at least one that cannot be ruled out at this stage.

7. Out of the offences alleged, only the offence under section 337-A(iii) is non-bailable. Punishment for that is primarily *arsh*, and for which the additional punishment of imprisonment up to 10 years may or may not follow.

8. Therefore, regards the accused of Criminal Bail Application No. 1842/2023 who seek post-arrest bail, the case against them requires further enquiry falling within the ambit of sub-section (2) of section 497 CrPC. As regards the accused of Criminal Bail Application No. 1840/2023 who seek pre-arrest bail, they have been able to demonstrate that they were roped-in simply because they were members of the same family.

9. For the reasons aforesaid, the accused Muhammad Musharaf and Muhammad Naeem in Criminal Bail Application No. 1842/2023 are granted post-arrest bail subject to furnishing solvent surety in the sum of **Rs. 50,000/- [Rupees Fifty Thousand only]** each alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court; and the interim pre-arrest bail granted to the accused Farah Naz and Muhammad Ali in Criminal Bail Application No. 1840/2023 is confirmed **in terms of the order dated 21-08-2023.**

Needless to state that the observations above are tentative and shall be construed to prejudice the case of either side at trial.

**JUDGE**

SHABAN\*