

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-982 of 2023

Criminal Bail Application No.S-1023 of 2023

Applicants: Zahid Hussain, Shahid Hussain and Ghulam Mustafa [Cr. Bail Application No.S-982 of 2023], Ashraf and Atta Muhammad present on interim pre-arrest bail [Cr. Bail Application No.S-1023 of 2023] through Mr. Ghulamullah Chang, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: **09.10.2023**

Date of Order: **09.10.2023**

O R D E R

ZULFIQAR ALI SANGI, J:- These are two bail applications; one is after arrest and the other is pre-arrest. However, both these applications are arising out of one and same crime viz. Crime No.324/2023 registered at PS Badin for the offence under sections 324, 147, 148, 149, 337-A (i), 504 PPC, as such; I would like to dispose of by this common order.

2. Applicants namely, Ashraf and Atta Muhammad are seeking their post-arrest bail while applicants namely, Zahid Hussain, Shahid Ali and Ghulam Mustafa are seeking their pre-arrest bail. Their earlier bail pleas were dismissed by learned 2nd Additional Sessions Judge, Badin vide orders dated 25.08.2023 and 29.08.2023 respectively.

3. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

2. Learned counsel for the applicants contends that the applicants are innocent and have been falsely implicated in the instant case; that the applicants have been shown armed with lathis except applicant Ashraf, who is stated to have knife in his hand; that as per FIR, the role of applicant Ashraf is shown that he has inflicted knife blow to victim Nadeem on his lower lip, while rest of the applicants caused lathi blows on his body parts; that so far allegation leveled upon the applicant Ashraf that he has inflicted knife blow to the victim is concerned, the medical certificate has negated it as it says that the kind of

weapon which sustained injury, is hard and blunt substance, hence, the prosecution story is doubtful and this is a fit case for grant of bail to the applicants/accused. Learned counsel next contends prior to instant FIR, the applicant Shahid Ali lodged FIR bearing crime No.55/2022 at PS Kadhan against the complainant and victim Nadeem for the offences punishable under section 337-F (vi), 506, 504, 34 PPC and this case has only been registered to take revenge; that all sections mentioned in the FIR are bailable except section 324 PPC, which is misapplied and it is yet to be determined at the trial; that so far, reserved injury declared by Medical Officer in Final Medico Legal Certificate as 'ITLAF-I-SALAHIIYYAT' is concerned, which is punishable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as taz'ir, as such, it does not come within the ambit of prohibitory clause of section 497 (1) Cr.P.C. He further contends that the applicants, who are on interim pre-arrest bail, have not misused the concession of bail while keeping the applicants Ashraf and Atta Muhammad behind the bars would not improve the prosecution case. He, therefore, prays for confirmation and grant of bail to the applicants/accused.

3. On the other hand, learned Assistant Prosecutor General, Sindh for the State has raised no objection for confirmation of interim pre-arrest bail to the applicants Zahid Hussain, Shahid Ali, Ghulam Mustafa and grant of post arrest bail to applicant Atta Muhammad. However, she has vehemently opposed the grant of post-arrest bail to the applicant Ashraf on the ground that he has caused injury to the victim Nadeem, which is declared by the Medical Officer as 'ITLAF-I-SALAHIIYYAT', as such; he does not deserve the concession of bail.

4. I have heard the learned counsel for the applicants, learned Assistant Prosecutor General, Sindh and have gone through the material available on the record with their able assistance.

5. Admittedly all the sections applied in the instant case are bailable except section 324 PPC and the injury as declared by the Medical Officer in Final Medical Certificate. There are general allegations against all the applicants/accused except applicant Ashraf, who has been alleged to have caused knife blow to the lower lip of victim Nadeem. The injury allegedly caused by applicant Ashraf is opined by Medico-Legal Officer has declared in Final Medico Legal Certificate as 'ITLAF-I-SALAHIIYYAT', which is punishable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as taz'ir. However, there appears difference between the medical version and the version of complainant, which creates the case of applicants/accused to be fit for further inquiry as envisaged under sub-section (2) of section 497 Cr.P.C. More so, prior to instant case, one of the applicants namely, Shahid Ali lodged FIR bearing crime No.55/2022 at PS

Kadhan against the complainant and victim Nadeem for the offences punishable under section 337-F (vi), 506, 504, 34 PPC, as such, *prima facie*, false implication of the applicants/accused in the instant case cannot be ruled out. So far section 324 PPC is concerned, its application is yet to be determined at the trial after recording the evidence of parties before trial. There is also no objection of learned A.P.G. Sindh for confirmation of bail to the applicants namely Zahid Hussain, Shahid Ali, Ghulam Mustafa and grant of post arrest bail to applicant Atta Muhammad.

6. In view of the above, I am of the view that the applicants/accused has established their case for bail. Consequently, both the above captioned criminal bail applications are **allowed**. As a result whereof, the interim pre-arrest bail already granted to the applicants namely, Zahid Hussain, Shahid Ali, Ghulam Mustafa vide order dated 06.09.2023 are confirmed on the same terms and conditions laid down therein and applicants namely Ashraf and Atta Muhammad are admitted to post-arrest bail, subject to their furnishing solvent surety in the sum of Rs.25,000/- (Rupees twenty five thousand) each and PR bond in the like amount, to the satisfaction of learned trial Court.

7. The observations made hereinabove are tentative in nature and will not prejudice the case of either party.

JUDGE