

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-393 of 2024

Applicants: Mukhtiar and 5 others, through
Mr. Jamal Nasir Bullo, Advocate

Complainant: Shah Muhammad, through
Mr. Abdul Qayyum Qureshi, Advocate

Respondent: The State, through
Mr. Shafi Muhammad Mahar,
Deputy Prosecutor General

Date of hearing: **15.07.2024**

Dated of order: **15.07.2024**

ORDER

Zulfiqar Ali Sangi, J: Through this bail application, applicants Mukhtiar s/o Ghulam Akbar, Ghulam Ali s/o Muhammad Chutal, Aijaz @ Khuda Dino s/o Qadir Bux, Sabir s/o Ahmed Khan, Momin s/o Ahmed Khan, and Wahid Bux s/o Allaho Dino, all by caste Chachar, seek their pre-arrest bail in Crime No.31 of 2024, registered at Police Station Baiji sharif, District Sukkur, for offences punishable u/s 114, 504, 506/2, 337-A(i), 337-F(i), 147, 148, 149, 403, 337-L(ii) PPC. Earlier their pre-arrest bail application was declined by learned Additional Sessions Judge, Pano Akil, vide order dated 11.06.2024, hence this application.

2. The applicants were booked in the FIR having general role of causing injuries to PWs Waqar Hussain, Babar and Gulzar.

3. Learned counsel for the applicants has contended that there is delay of one day in lodging of FIR which has not been explained as such registration of FIR after consultation and deliberation cannot be ruled out; that all the witnesses are closed relatives of the complainant and interested; that all the offences are bailable except 506/2 PPC which also does not fall within prohibitory clause of section 497 Cr.P.C.

4. Mr. Abdul Qayyum Qurshi who has filed power on behalf of the complainant and learned Deputy Prosecutor General opposed the confirmation of pre-arrest bail on the ground that the applicants are nominated in the FIR with specific roles, and delay has been

explained, therefore the applicants are not entitled for the confirmation of their pre-arrest bail.

5. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

6. Admittedly there is delay of about one day in registration of FIR, which has not been properly explained. Offences for which applicants are charged are punishable up to imprisonment for 05 years which also does not fall within prohibitory clause of section 497 Cr.P.C and grant of bail in these cases is a rule and refusal is an exception, however, strong reasons for refusal are required. Reliance is placed on the case of ***Tariq Bashir v. The State (PLD 1995 SC 34)*** and ***Sheikh Abdul Raheem v. The State and another (2021 SCMR 822)***.

7. The Supreme Court in case of Muhammad Imran vs. The State (PLD 2021 SC 903) has formulated the grounds for the case to fall within the exception meriting denial of bail in the cases which do not fall within prohibitory clause of Section 497 Cr.P.C as (a). the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further the Supreme Court held in the said order that the prosecution has to show if the case of the applicant falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicant. It is also settled by the Apex Courts that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record.

8. From the tentative assessment of material placed before this Court, the applicants have made out their case for confirmation of their pre-arrest bail. Resultantly, instant Cr. Bail Application is allowed. Interim pre-arrest bail granted to the applicants vide order dated 14.06.2024 is hereby **confirmed** on same terms and conditions.

9. Observations made herein above are tentative in nature and will not cause any prejudice to either party at the trial.

JUDGE

Suleman Khan/PA