

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

Cr. Bail Application No. S- 201 of 2024

DATED ORDER WITH SIGNATURE OF JUDGE

For orders on office objection.
For hearing of main case.

05.08.2024

Applicants are present on interim pre-arrest bail.

Mr. Pir Bux Bhurgri, Advocate for applicants.

Mr. Imam Ali Chang, Advocate for complainant.

Mr. Siraj Ahmed Bijarani, Asst. Prosecutor General, Sindh for State.

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ZAFAR AHMED RAJPUT, J.- Through the instant bail application, applicants (1) Khalil Ahmed @ Khalil s/o Akbar Ali @ Akber Chang, (2) Piyar Ali s/o Khuda Dino and (3) Abdul Ghaffar @ Ghaffar s/o Sikandar Chang, seek pre-arrest bail in crime No.14 of 2024, registered at PS Tando Ghulam Hyder, u/s 452, 376, 511, 337-A(i), 337-F(i), 506/2, 509, 34 PPC. Their earlier bail application bearing No.56 of 2024 was rejected by the learned Additional Sessions Judge-I, Tando Muhammad Khan, vide order dated 01.02.2024. The applicants were admitted to ad-interim bail by this Court, vide order dated 26.02.2024, now they seek confirmation of their interim bail.

2. Briefly stated, facts of the prosecution case are that on 27.12.2023 complainant along with her children was sleeping at home while her husband had gone to labour work. At about 03:00 pm, accused each one namely Khalil s/o Akber Chang armed with pistol, Pyar Ali s/o Khuda Bux Chang and Ghaffar s/o Sikandar Chang duly armed with axes entered into the house of complainant and on pointation of weapon, accused Pyar Ali tried to take her Shalwar off in order to commit rape while accused Ghaffar caused injury to complainant with axe on her arm, head and body on which she raised hue and cry to which her brother Zafar came over there and thereafter accused persons went away by

extending threats of dire-consequences. Subsequently, the complainant filed Cr. Misc. Application No.15 of 2024 u/s 22-A & B Cr.P.C seeking directions to SHO concerned for lodging of the F.I.R, which was allowed by the Sessions Judge / Ex-Officio Justice of Peace, Tando Muhammad Khan. Consequently, the aforesaid F.I.R was lodged by the complainant on 15.01.2024.

3. After hearing the learned counsel for the applicants, complainant and A.P.G. and perusing the material available on record with their assistance, it appears that both the parties have some old dispute. As per F.I.R the injuries caused to the complainant were severe in nature but final medical certificate shows otherwise. From the medico-legal report it appears that no visible injury was found available on the body of complainant. Had it been intention of applicants to commit rape of the complainant then there would have been a mark of violence / injury on her body; thus, it is yet to be seen if the applicants had such intention. As such, application of section 376 PPC could only be determined at trial. The record further reflects that on 12.01.2024, DSP Complaint Cell Tando Muhammad Khan submitted his report to aforementioned Ex-Officio Justice of Peace by stating that the parties are in tussle over matrimonial / land dispute and as per secret and open enquiry the complainant has exaggerated the facts while no such incident has taken place; hence, the case of applicants squarely falls within the ambit of further enquiry as envisaged under sub-section (2) of Section 497 Cr.P.C. In such circumstances, grant of bail to an accused is a rule and its refusal is an exception. No exceptional circumstance appears to with hold the bail to applicants in this case. The present case also does not fall within the exception laid down by the Honourable Supreme Court of Pakistan in the case of *Tariq Bashir vs. The State (PLD 1995 SC 34)*. The applicants were admitted to ad-interim pre-arrest bail on 26.02.2024 and since then they are attending the trial Court regularly. Hence, the instant Cr. Bail Application is allowed and the

interim pre-arrest bail already granted to the applicants vide order dated 26.02.2024 is hereby confirmed on same terms and conditions.

4. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicants / accused in any manner try to misuse the concession of bail, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.

JUDGE

Hafiz Fahad