

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-118 of 2024

(Abdul Khaliq and another Vs. The State)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing & Order 21.08.2024

Mr. Bhoro Bheel, Advocate for the applicant a/w applicants

Mr. Arjan Das, Advocate for the complainant

Mr. Dhani Bakhsh Mari, A.P.G Sindh a/w I.O/ ASI Mavji Bheel of P.S
Khokhrapar

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ORDER

Adnan-ul-Karim Memon, J The Applicants Abdul Khaliq and Abdul Majeed are seeking pre-arrest bail in F.I.R No. 06 of 2024 for the offense under section 504, 114, 506(ii), 341, 337-A(i), 337-F(i), 337-F(vi) PPC at Police Station Khokhrapar. Their earlier bail plea has been declined by the trial court vide order dated 27.05.2024 on the premise that the applicants are nominated in the FIR for actively participating in the commission of the alleged crime by causing hatchet and lathi blow to the victim/ injured Muhammad Siddique which were later on declared by the Medico-Legal Officer under sections 337-A(i), 337-F(i), 337-F(vi) PPC.

2. Learned counsel for the applicants/ accused argued that FIR was lodged with a delay of eleven days whereas the injuries were reported to the police after reaching the hospital. He further submitted that there is previous enmity between the parties and the Medical Certificate issued by the Medico-Legal Officer is under challenge before the Special Medical Board. Learned counsel referred the Medical Certificate which shows that the alleged incident took place at 1500 hours and the injury is attributed to the applicants is of a hard and blunt substance, as opined by MLO whereas the complainant has shown the injury through a sharp-edged weapon by which factum requires further inquiry. The learned counsel submitted that the brother of the complainant fell from the camel and received the injuries but subsequently managed the story and booked the applicants in false FIR; that there are general allegations against the applicants and the injuries do not fall within the prohibition contained in section 497(i) Cr. P.C; that the CDR record of the complainant explicitly shows that he was not present at the time of the alleged incident. The learned counsel pleaded malafide on the part of the complainant and the police and argued that it was a fit case for confirmation of bail already granted to the applicants. He prayed for confirmation of bail already granted to the applicants vide order dated 11.06.2024.

3. The learned deputy Prosecutor General assisted by the counsel for the complainant opposed the grant of bail to the applicants on the premise that the applicants were nominated in the subject crime and they were armed with hatchet and lathi and then

intercepted the victim/ injured Muhammad Sidique and jointly attacked him with hatchet and lathi and caused him severe injuries on his vital part. Per learned counsel six injuries were received by the victim/ injured which were found to be falling within the ambit of 337-A(i), 337-F(i), 337-F(vi) PPC punishable with imprisonment up to seven years. He added that the prosecution witnesses have supported the case; besides that, there are no extraordinary circumstances to grant relief of pre-arrest bail to the applicants as they have hampered the investigation and failed to join the investigation as such their custody be handed over to the police the investigation will be conducted under law. He prayed for the dismissal of the bail application.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. Tentative assessment of record reflects the following aspect of the case:-

- i) The alleged offense occurred on 15.3.2024 and the same day, the injured obtained a letter dated 15.03.2024 for medical treatment after receiving Final MLC on 22.3.2024, the complainant reported to police on 26.3.2024.
- ii) Medco Legal Officer opined the injuries as Shajjah-i-Khafifah, Ghayr Jaifah Damiyah, Ghayr Jaifah Munaqqilah, and other Hurt, falling within the ambit of 337-A (i), 337-F(i), 337-F (vi) PPC. He also found a displaced fracture of the shaft of the right ulnar of the injured.
- iii) the applicants are specifically nominated, for carrying hatchet and Lathi, and injuries to Muhammad Siddique and witness.
- iv) the injuries were promptly reported to the concerned Police.
- v) the victim/injured Muhammad Siddique, in his statement recorded under section 161 Cr. P.C. has supported the contents of the F.I.R.
- vi) The report of the MLO classifies injuries received by Muhammad Siddique as Shajjah-i-Khafifah, Ghayr Jaifah Damiyah, Ghayr Jaifah Munaqqilah punishable under section 337-F(vi) PPC which imprisonment up to 7 years.
- vii) 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.
- viii) An essential prerequisite for the grant of bail under sub-Section 2 of Section 497 is that the Court must be satisfied based on the opinion expressed by the Police or the material placed before it that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years.
- ix) The mere possibility of further inquiry exists almost in every criminal case. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offence and if the answer is in the affirmative he is not entitled to a grant of bail.

6. By all means, the applicants have to satisfy the Court regarding the basic conditions enumerated under Section 498 of the Code of Criminal Procedure, 1898 as no specific details of mala fide intention are shown on the part of the complainant and victim to book the applicant in injury case. On the subject law point, the Supreme Court

is clear and held in the case of *Rana Abdul Khaliq Vs. State* (2019 SCMR 1129), that the accused seeking judicial protection is required to reasonably demonstrate that his/her intended arrest is calculated to humiliate him with taints of mala fide. So far the delay though not, however, is of no help to the applicants at this stage as it has been repeatedly held by the Supreme Court that in such cases delay in lodging the FIR is immaterial. There was no previous enmity between the parties. Thus I am not inclined to endorse the viewpoint of the applicants at this stage for the simple reason that bail before arrest is meant to protect innocent citizens who have been involved in heinous offenses with mala fide and ulterior motives, however in the present case no such ground existed in favor of the applicants to show that there was a malafide intention or ulterior motive on the part of the complainant/victim to book the applicants in the serious injury case.

7. Without prejudice to the merits of the case, which is pending adjudication in the Trial Court, I am of the tentative view that in the absence of any mala-fide or ill-will of the complainant, victim, or on the part of the police for their false involvement in this case, the applicants have failed to make out their case for confirmation of ad-interim pre-arrest bail.

8. For the aforesaid reasons, this bail application is dismissed. Accordingly, the interim order dated 11.6.2024 passed by this Court is hereby recalled and the applicants are required to surrender before the Investigating Officer, who is present in court and seeks their custody, for investigation purposes and to produce them to face the trial, however, it is made clear that if the custody of the applicants is required, this court will not create any bottleneck in the investigation process, therefore the security office to facilitate the applicant's surrender.

9. The observations made in this order shall not prejudice the case of either party on merits and the learned Trial Court shall examine the complainant and victim within two months positively and if the charge is not framed the same shall be framed on the date so fixed by the trial court. The compliance of the order shall be made positively without fail.

10. Above are the reasons assigned in support of my short order dated 21.8.2024.

JUDGE

“Bilal”