

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Bail Application No.S-534 of 2022

DATE HEARING	OF	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on O/objection at flag-A.*
2. *For hearing of bail application*

Date of hearing. 08.09.2022

Mr. Mushtaque Ali Tagar, Advocate alongwith applicants.

Syed Sardar Ali Shah, Addl. Prosecutor General, Sindh.

ORDER

KHADIM HUSSAIN SOOMRO, J; Through instant bail application, applicants/accused, namely, *Mazharuddin, Gul Muhammad, Jhando Khan, Ali Muhammad and Muhram*, seek their admission on pre-arrest bail in FIR No.195/2022, registered at Police Station, Naushahro Feroze District Naushahro Feroze for offences punishable under Sections 324, 114, 337-H(i), 337F(i), 337H(ii), 148, 149 PPC. Earlier, their bail application was declined by learned Additional Sessions Judge-III, Naushehro Feroze, vide order dated 29.09.2022.

2. The facts of the prosecution case are that complainant Gul Hassan Mashori lodged his FIR stating therein that his brother Madad Ali solemnized marriage with the daughter of accused Jhando Khan. Afterwards, she obtained “Khula” from the Court of law. It has been reported that another brother of the complainant, namely Mir Muhammad, has entered into a matrimonial union with the daughter of the aforementioned individual, namely Jhando Khan. The said daughter of Jhando Khan is currently dwelling with her spouse. However, Jhando Khan's party has allegedly issued severe threats of dire consequences to the complainant. On 12-08-2022, the complainant and his brothers,

Sher Muhammad and Mir Muhammad, were on a motorcycle and went to make condolence when they reached Link Road in Phull Village at Suhrab Mari stop. At that location, they came across three individuals on motorcycles from the Suhrab Mari path. These individuals were identified as Mazharuddin, son of Muharram Mashori, armed with a gun; Jhando Khan, son of Sobho Khan Mashori, armed with a gun; and Ali Muhammad, son of Sobho Khan having lathi, within the given scenario, Muharram, who is the son of Sobho Khan Mashori, halted a motorbike and then approached the complaint party. It is alleged that Muharram Mashori, armed with a pistol, instigated the other accused individuals to murder the complainant party. On the instigation, accused Mazharuddin made straight fire of his gun at the brother of complainant Sher Muhammad in order to commit his murder, which hit his right thigh, who fell down while raising cry; accused Gul Muhammad Mashori caused lathi blow upon applicant, which hit on his arms and hands while other accused also caused lathi blows to brother of complainant namely Mir Muhammad and then accused made aerial firing, on which complainant party raised cries, which garnered the attention of passersby. Subsequently, the accused departed from the scene, while the complainant's sibling had severe injuries and their blood was pouring. The complainant transported his injured sibling to the primary healthcare facility, where he obtained a letter for medical treatment. Subsequently, they proceeded to the hospital, where the injured individual was referred to Nawabshah Hospital. The complainant subsequently registers an FIR against the applicants.

3. Learned counsel for the applicant accused argues that there has been a delay of approximately five days in the registration of FIR

regarding which no reasonable explanation has been given. He further argue that the applicant and the complainant have a strained relationship due to a disagreement on the marriage of Jhando's daughter. He next submits that role attributed applicant Mazharuddin of straight fire while against accused Gul Muhammad who caused lathi blow to the complainant, which hit on his right thigh that is a non-vital part of the body. He further submits that injury allegedly sustained by the PW/injured Sher Muhammad has been declared by the Medico-legal Officer as 337-F(iii) PPC, which carries maximum punishment upto three years; however, the said injury has not been declared by the Medico-legal Officer to be fatal or detrimental to the life of injured. He further submits that case against applicants requires further inquiry. He, therefore, requests for confirmation of bail.

4. On the other hand, learned Additional Prosecutor General Sindh, appearing on behalf of the State, submits that the offence does not fall under the prohibitory clause of Section 497 Cr.PC, hence, has no objection if an interim pre-arrest bail of the applicant accused is confirmed.

5. Heard the learned counsels of the parties and perused material available on the record.

6. Admittedly, there is delay of about Five days in the registration of FIR regarding which no plausible explanation has been given. The role attributed to applicants Mazharuddin and Gul Muhammad of causing fire arm and lathi blow injury to PWs Sher Muhammad and Mir Muhammad; however, the said injury has not been declared by the Medico-legal Officer to be fatal or detrimental to their lives. The applicant accused challenged the genuineness medical certificate by presenting their case to the special medical board. The members of the Special

Medical Board are unanimously opinion that the fabrication of the injuries sustained by Sher Muhammad cannot be ruled out. . In the wake of Special Medical Board's opinion, section 324 has been deleted and now the case has been sent to the court of Civil Judge Judicial Magistrate for trial. Even otherwise the medical certificate shows that injury sustained by the injured has been declared as Ghyr-e-Jaifah Mutalahimah 337F(iii) which provides punishment of three years and does not fall within the prohibitory clause of section 497 Cr.P.C. In this context reliance can be placed in the case of *SAEED ULLAH and 2 others V/S The State, 2023 S C M R 1397*.

7. It is also admitted position that the parties are at daggers drawn with each other, which is apparent in the contents of the FIR; consequently, the possibility of a false implication cannot be ruled out. The applicants accused are attending the trial court; no purpose would be served to recall the interim pre-arrest bail order.

8. In view of dicta laid down by the Supreme Court of Pakistan in the case referred above, the case of present applicants require further inquiry. Consequently, instant bail application is hereby allowed. The interim pre-arrest bails already granted to applicants named above vide Order dated 24.10.2022 is hereby confirmed on same terms and conditions.

9. Needless to mention that whatever stated above is tentative in nature and shall not influence the mind of learned trial Court.

10. The titled Crl. Bail Application stands disposed of in above terms.

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