

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-460 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of bail application

Date of hearing **28.08.2023**

Mr. Abdul Raqeeb, Advocate for applicants along with applicants.

M/s Ghulam Murtaza Soomro and Syed Tanveer Abbas Shah, Advocate for complainant.

Syed Sardar Ali Shah Addl. Prosecutor General, Sindh.

ORDER

KHADIM HUSSAIN SOOMRO, J; Through instant bail application, applicants/accused Mushtaque Ahmed son of Lal Bux, Ghulam Sarwar, Naveed Ahmed, Muhammad Tahir @ Tahir, Rahib, Azad Ali, Muhammad Bux, Sajjad Hussain, Meer Hassan and Shahmeer Memon seek their admission on pre-arrest bail in Crime No.124/2023 Police Station, Ubauro for offence punishable under Sections 324, 337F(v), 337F(i), 147, 148, 149 PPC. The applicants preferred anticipatory bail application No.1022/2023 before the Court of Additional Sessions, Judge-II, Ghotki, where, after hearing, the parties turned down their request; hence, instant bail application has been maintained.

2. The crux of the prosecution case as unfolded in the FIR lodged by complainant Khadim Hussain, son of Imamuddin lodged FIR on 18.06.2023 at about 0820 hours at Police Station, Ubauro, stating therein that Rahib Ali Memon erected a drainage pipe that directed water towards the land of the complainant, resulting in their displeasure and opposition. On 14.06.2023, the complainant, along with his nephew Sajid Ali (approximately 18 years old), Wajid Hussain, and Aftab Kori, were present at Ada (Bus stand). At around 5:00 p.m., a group of individuals consisting of Mushtaque Ahmed carrying an iron rod,

Ghulam Sarwar and Naveed Ahmed wielding lathis, Tahir with a hatchet, Rahib with a lathi, Muhammad Bux armed with a pistol, and Sajjad Hussain and Meer Hassan arrived at the place of the incident. Upon their arrival, accused Rahib questioned why they had prevented them from installing the pipelines, stating that they would not spare them today. The accused, Mushtaque, caused an Iron rod blow in order to cause the murder of his nephew Sajid Ali, which hit his right arm; accused Rahib caused Iron rod blow in order to murder, which hit the complainant on the right shoulder. They raised cries, and on their cries, the villagers attracted there, and on seeing them, all accused persons went away towards their houses. The complainant thereafter obtained a letter from the Police Station, proceeded to the Taluka Hospital for medical treatment, and upon completion of the treatment and receiving the Medico-Legal Certificate (MLC), presented themselves at the Police Station to register an FIR.

3. Learned Counsel for the applicants contends that applicants have falsely been implicated by the complainant with malafide intentions and ulterior motives. He further submits that the complainant party attacked the applicant party, who was standing at a Bus stand. They caused Iron rod blows to the complainant and PW Sajid Ali, which they received on different parts of the body. The police did not register an FIR against the applicant party; on the contrary, the complainant, in collusion with the police, lodged an FIR against the applicant party. The Counsel further contends that the applicant party did not cause any injury, and during the scuffle, both parties received injuries. He argued that the applicant party also lodged an FIR against the complainant party of this case bearing Crime No.122/2023 u/s 324, 337F(v), F(i), 147, 148, 149 PPC at the same police Station and this is counter version case and it is yet to be determined at the trial that who is aggressor and aggressed upon. He contends that medical evidence is inconsistent with ocular testimony and deep scrutiny of evidence is not permissible, nor was it the requirement of law at the bail stage. By contending so, he prayed for a grant of bail.

4. The learned Additional Prosecutor General contends that while there exists a state of hostility between the involved parties, it is important to note that four individuals have suffered harm in this

particular case. Crime No.122/2023 at the same Police Station wherein Four persons have sustained injuries. He candidly submits that it seems that this case is of two versions wherein both the parties are alleging aggression against each other; who is an aggressor and who has been aggressed is to be determined at trial; therefore, he records his no objection for confirmation of bail to the applicants. While learned counsel for the complainant vehemently opposed the confirmation of bail.

5. Heard arguments of learned counsel for parties and perused the record.

6. It has come on record that there is a delay in lodging the FIR for 05 days. No explanation has been offered in the FIR for such delay. It is a matter of record that applicant No.6 Azad Ali, son of Rahib, has also registered FIR No.122/2023 wherein it has been alleged that the complainant party, while armed with an Iron rod and lathis also caused injuries to him as well as PWs Sajjad Hussain, Meer Hassan and Azhar Ali whose Medical Certificates are available on record. The Medical Officer opined the injuries attributed to injured persons as Jurh Ghyr Jaifah Hashimah, Shajjah-i-Khaifah, and other hurts punishable under Sections 337F(v) and 337A(iii) PPC, punishable up to five years. The injuries attributed to the complainant party, in this case, were also opined by the Medical Officer as Jurh Ghyr Jaifah Hashimah caused by hard and Blunt Substance. Indeed, deep scrutiny of evidence is not permissible at the stage of bail. Furthermore, this is a counterblast of FIR No.122/2023 lodged by the present applicant's party against the complainant party in which the accused in counter case has also been granted pre-arrest bail.

7. Both participants presented their respective accounts of the occurrence, each offering their own perspective on how it unfolded. Hence, it is plausible that the concealment of factual information from both parties cannot be brushed aside. Subsequently, upon the collection of evidence, the trial court must assess said evidence to determine the party responsible for initiating the aggression and the party subjected to said aggression. It is noted that these matters can be thoroughly discussed during the evidentiary proceedings at the trial. However, at

present, it is not possible to raise any objections regarding the aforementioned stance, and it is not feasible to provide any preliminary determinations on which side is the aggressor. In such circumstances, the involvement of the applicant in the commission of the alleged offence requires further inquiry. The recognition of the fundamental right to personal liberty is firmly established in the Constitution of the Islamic Republic of Pakistan, 1973. It is imperative to note that this right cannot be deprived just based on unsubstantiated and ambiguous accusations. The situation at hand involves two conflicting accounts, which aligns with the well-established legal principle that when there are two versions presented in court, it falls directly within the scope of section 497(2) of the Code of Criminal Procedure. *Reliance is placed on Muhammad Umar Waqas Barkat Ali V/S The State , Miran Bux v. The State (PLD 1989 SC 347), Sajid Hussain alias Joji v. The State (PLD 2021 SC 898), Javed Iqbal v. The State (2022 SCMR 1424) and Muhammad Ijaz v. The State (2022 SCMR 1271).*

8. The applicants are attending the trial Court regularly; therefore, recalling interim pre-arrest bail already granted to them will not serve any useful purpose. Consequently, the instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicants vide order dated 03.07.2023 is hereby confirmed on the same terms and conditions. The applicants present are directed to continue their appearance before the trial Court till the final decision of the main case.

9. Needless to mention here that, the observations made herein above are tentative in nature, and the trial Court may not be influenced by the same and decide the case on its own merits as per evidence and the material made available before it.

Bail application stands disposed of in the above terms.

J U D G E

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