

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-371 of 2023
(*Nisar Ahmed Shaikh Vs. The State*)

Date	Order with signature of Judge
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For hearing of bail application

Mr. Manzoor Hussain Narjeo advocate for applicant.
Syed Sardar Ali Shah Rizvi, Additional P.G for State

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ORDER
15-09-2023

KHADIM HUSSAIN SOOMRO, J. Through the instant Application, applicant Nisar Ahmed has sought pre-arrest bail in Crime No. 08/2022, under section 337A(i), 337F(i), 452, 354, 114, 147, 148, 149 337A(ii), 337L(ii), 452, 34 PPC, registered at Police Station Sadique Kalhoru. After the dismissal of his like-nature application by the Court of IIIrd Additional Sessions Judge Khairpur, vide order dated 31-05-2023; the applicant has impugned the said order by filing instant Crl. Bail Application.

2. Briefly, the facts of the prosecution case are that complainant Munwar Ali lodged the FIR on 28-10-2022, alleging therein that he has constructed a house on his own land. However, Misri party has expressed dissatisfaction with this development and urged him to migrate from there, as the land belongs to him. On 10-07-2022, the complainant, accompanied by his nephew Yameen and mother Mst. Samul Khatoon, was present in their residence. At approximately 14:40 hours, they saw accused Misri with a repeater, Badar @ Ismail with a hatchet, Nisar Ahmed with a hatchet, Gohar @

Buledi, Ayub, Allah Ditto, Daim Razzaque with lathis, Juman and Aslam with hatchets. These individuals, who are Shaikh by caste, forcibly entered the complainant's house. Accused Misri instigated the other accused to beat the complainant party, and the accused caught hold of Mst. Samul Khatoon and accused Nisar of causing a hatchet blow at her head. The complainant party raised cries, which attracted the neighbourhood, who came there, and the accused persons escaped away from the spot. Ultimately, the complainant brought the injured to the police station, obtained a letter for treatment and certificate, after that he lodged his FIR.

3. Learned counsel for the applicant submitted that the applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motive due to a dispute over the landed property; that co-accused Misri lodged the FIR No. 07/2022 at PS Sadique Kalhoro against the present complainant & others and due to such annoyance, he has lodged this false FIR in order to make the counter case; that there is a delay of about 21 days in lodging the FIR for which the complainant has furnished no reasonable explanation; that during the course of the investigation, I/O of the case let of all the accused persons except present applicant/accused and such an order was also passed by the learned Magistrate; therefore, the case of the applicant is one of the further inquiry, and he is entitled to grant of bail.

4. Conversely, the learned Additional P.G. opposed the grant of bail on the ground that the predominating role of causing head injury to injured Mst. Samul Khatoon is attributed

to the applicant/accused; therefore, he is not entitled to concession of bail.

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

6. The record reflects that the name of the applicant/accused appears in the FIR with the predominating role of causing hatchet injury at the head of Mst. Samul Khatoon, which is a vital part of the human body. It is not disputed that the eye-witnesses mentioned in the FIR, including the injured, have so far stood by their statements made before the police fully implicating the present applicant accused in the alleged offences and also that prima facie the medical evidence lends support to the allegations levelled by the prosecution against him. As far as the role of the remaining accused is concerned, they have not caused any injury either to the complainant or any of the witnesses. The grant of pre-arrest bail is an extraordinary concession which can only be granted in exceptional circumstances, and it is meant for innocent persons to save them from humiliation and disgrace at the hands of the police. The purpose of this remedy is to protect the liberty and reputation of the citizens, particularly in a case where the circumstances reflect that it is a case of further inquiry based on material available on the record. The power to grant bail under section 498, Cr.P.C., is not additional or independent to Section 497, Cr.P.C., and even while granting pre-arrest bail, the provisions contained under Section 497, Cr.P.C., are also to be kept in mind. However, the grant of bail or its refusal is essentially a matter of discretion to be exercised judiciously and not arbitrarily, and the facts of every case are to be considered

separately and independently. A reasonable and plausible ground must exist for the grant of bail before arrest.

7. Primarily, the concept of pre-arrest bail was developed on three presumptions: firstly, the accused is presumed to be innocent till he is found guilty; secondly, the accused should have a right to prepare his defence and prove his innocence before the trial Court and thirdly the accused should not be punished before the findings of his conviction rendered by the Court.

8. Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail, the Court can consider the merits of the case in addition to the element of malafides/ulterior motives. The material available on the record in the shape of FIR, statements of the eye witnesses and injured, coupled with medical certificate prima facie connect the applicant accused with commission of an offence and disentitled him to the concession of pre-arrest bail. Therefore, pre-arrest bail of the applicant accused is dismissed and interim pre-arrest bail order dated 05-06-2023; is hereby recalled.

9. The observation made hereinabove is tentative shall not prejudice the trial of the accused.

J U D G E