

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-454 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING.

12.06.2018.

Mr. Omparkash H. Karmani, Advocate a/w applicants/accused.

Mr. Muhammad Azhar Arain, Advocate for complainant.

Mr. Shahid Ahmed Shaikh, D.P.G

ORDER

ZAFAR AHMED RAJPUT, J:- Through this Criminal Bail Application, applicants Mahendro S/o Walho and Chaneser S/o Khenro seek pre-arrest bail in Crime No.11 of 2017, registered under Section 324, 114, 504, 337-A(i), 337-A(ii), 337-F(vi), 337-L(i), 334-H(ii), 147, 148, 149 PPC, registered at P.S Taluka Umerkot. Their earlier bail application bearing No.133 of 2017 was dismissed by the learned Ist Additional Sessions Judge, Umerkot, vide order dated 10.04.2017.

2. The allegations against the applicants / accused are that on 02.02.2017 at 1700 hours, applicant Mahendro caused hatchet blow to Nasir Hussain and applicant Chaneser caused *lathi* blow to injured Shahzad. As per the report of MLO, the injuries attributed to the applicants have been described being *Shajjah-i-mudihah*, punishable under Section 337-A(ii) for 05 years and *Ghayr-jaiyah* punishable under Section 337-F(iv) for 07 years.

3. Learned Counsel for the applicants has mainly contended that the applicants are innocent and they have falsely been implicated in this case by the complainant; that the alleged offence does not fall within the prohibitory clause

of Section 497 Cr.P.C; that the applicants after obtaining ad-interim pre-arrest bail vide order dated 16.06.2017 have never misused the concession of bail.

4. On the other hand, the learned Counsel for the complainant, while opposing the confirmation of bail of the applicants, has mainly contended that the confirmation of pre-arrest bail being for a motive such as humiliation and unjustified harassment, the prosecution assigned the motive to the accused for irreparable injuries and the motivation of police etc. is not available, hence, the applicants are entitled for the concession of extraordinary pre-arrest bail. In support of his contentions, the learned Counsel has relied upon the cases reported as (i) *PLD 1983 S.C 82* (ii) *1983 SCMR 645* (iii) *2006 SCMR 407* (iv) *2003 P.Cr.L.J 135* (v) *2013 YLR 255* (vi) *2006 SCMR 933* and (vii) *SBLR 2018 Sindh 747*.

5. Learned D.P.G while adopting the arguments of the learned Counsel for the complainant has also opposed the confirmation of bail.

6. Heard the learned Counsel for the parties and perused the material available on record.

7. It appears that the injuries allegedly caused by the applicants to injured Nasir and Shahzad being punishable under Section 337-A(ii) and 337-F(iv) and the punishment whereof is 05 years and 07 years respectively, which does not fall within the prohibitory clause of Section 497 Cr.P.C. It further appears that the applicants were admitted to ad-interim bail by this Court on 16.06.2017 and there is no complaint with regard to misusing of concession of bail by the applicants. So far as, the contention of the learned Counsel for the complainant with regard to the ingredients for the grant of extraordinary concession of bail is concerned, it may be observed that if the applicants / accused are otherwise entitled for the concession of bail,

their application for grant of pre-arrest bail cannot be refused merely on the ground that such ingredients are missing, even otherwise no purpose will be served if their application for grant of pre-arrest bail is rejected and they are taken into custody and latter they will have to move an application before the Court concerned under Section 497 Cr.P.C, hence, the interim bail already granted to the applicants / accused, vide order dated 16.06.2017, is hereby confirmed on the same terms and condition.

8. Needless to mention that the observations made in this bail order are of tentative nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of in the above terms.

JUDGE

Shahid