

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

CrI. Bail Application No.D-09 of 2024

(Shah Nawaz and others Vs. The State)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Before

Adnan-ul-Karim Memon, J

Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Mr. Mian Taj Muhammad Keerio, advocate a/w applicants.

Mr. Dhani Bakhsh Mari, Assistant P.G a/w SHO Muhammad Juman of PS
Khipro.

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ORDER

Adnan-ul-Karim Memon, J:

Through the instant bail application,

the applicants Shah Nawaz, Amjad Ali, Asghar Ali, Niaz Khair, and Ghulam Hussain have approached this Court for a grant of pre-arrest bail in terms of Section 498-Cr.P.C in F.I.R No.36/2024 registered for offenses under Sections 324, 337-A(i), 337-F(i), 353, 337-H(ii), 147, 148, 149 P.P.C r/w section 6/7 ATA at PS Khipro District Sanghar.

2. Their earlier bail plea has been rejected by the trial court with the reasoning that the applicants were implicated in the FIR with specific roles, and during the investigative process bullets and weapon casings were recovered from the scene, and during the scuffle, one police constable namely Ali Nawaz received a head injury at the hands of the applicant Niaz Khair. Besides, pre-arrest bail cannot be granted unless accused persons succeed in showing that the prosecution has been launched against them by the complainant with malafide intention and that the police have to arrest them with the ulterior motive of harassing and humiliating them.

3. The accusations against the applicants are that on 05-04-2024 they in connivance with each other, assaulted the police party and a Polic Constable namely Ali Nawaz received head injuries. Such a report of the incident was lodged at Khipro Police Station on 05-04-2024 against the applicants. The applicants being aggrieved by and dissatisfied with the inclusion of their names in the FIR, approached this Court and succeeded in obtaining the pre-arrest bail vide order dated 04.06.2024.

4. Learned counsel for the applicants states that there is malafide intention on the part of the police to book the applicants in the subject crime, and injury so sustained by the police constable Ali Nawaz at the hands of applicant Niaz Khair is concocted. He prayed for confirmation of the bail already granted to the applicants vide Order dated: 04-06-2024.

5. Learned A.P.G. is unable to demonstrate any role played by the applicants in the alleged crime. However, he insisted for dismissal of the bail application in terms of the ratio of the Order passed by the trial Court.

6. We have heard learned counsel for the parties and perused the record of the case.

7. The learned trial Court has declined the relief of pre-arrest bail to the applicants observing that pre-arrest bail is an extraordinary relief and can only be extended to an innocent person who is implicated in the case based on malafide, but the applicants have failed to point out any malafide. However, the tentative assessment of the record reveals the following position of the case:-

i) The alleged incident took place on 05-04-2024 and the same was reported on the same day. The police disclosed that they were busy checking vehicles and in the meanwhile, the applicants assaulted them and fled away from the place of the incident.

ii) That no recovery has been effected from the applicants; that offense under section 324 PPC is yet to be ascertained whether the made out or otherwise.

8. It appears from the record that case has been challaned and present applicants are no more required for investigation. It is noted that the case in hand is of an alleged encounter between the parties with sophisticated weapons for a considerable time and at some distance, but during this alleged encounter surprisingly nobody received any injury, but only one police constable received injury on his head with the hard substance and it cannot be ascertained whether he received such injury at the hands of the applicants, which does not appeal to the prudent mind that in such encounter applicants came so close to the police officials and caused injury to police constable with hard substance. During arguments, we have specifically asked the question from the learned Assistant P.G. that when the encounter took place at some distance, then how did a police constable receive injury on his head, he has no satisfactory answer to it. Prima facie this fact requires further inquiry based on malafide of police under section 498 Cr.P.C.

9. It is also noted that the incident took place in a populated area, despite this fact no person from the locality or passerby from the road has been cited as witnessing the event, as such, this aspect of the case requires further inquiry in the matter whether the incident has taken place in a fashion as stated in FIR or otherwise. It is settled law that at the bail stage deeper appreciation of evidence is unwarranted, but a bird eye view is to be taken to available record before the Court to satisfy prima facie, whether the accused is/are connected with the commission of the offense or not, the benefit of the doubt will go to the accused even at the bail stage.

10. We have noticed that Section 19(7) of the Anti-Terrorism Act, 1997 provides that the Court shall on taking cognizance of a case proceed with the trial from day to

day and shall decide the case within seven days, but in this case, the case has not been concluded. It is observed that expeditious and fair trial is the fundamental right of the accused as envisaged under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Delays in the disposal of cases and imparting justice can reduce the confidence of the public in the judicial system and cause frustration and anguish. The object of criminal prosecution is not to punish under trial the accused for an alleged offense and the accused could not be sent to jail for an indefinite period without remedy of trial.

11. As observed above, the case has been challaned and against this backdrop, no useful purpose would be served by sending the applicants behind bars. It is important to remember here that the bail is not to be withheld as a punishment. Nothing on record that the present applicants are previous convicts or they have remained indulged in any other identical case in the past; therefore, under these circumstances, the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

12. In view of the above, we have concluded that applicants have made out their case for the grant of pre-arrest bail and consequently this criminal bail application filed by the applicants, seeking pre-arrest bail under Section 324, 337-A(i), 337-F(i), 353, 337-H(ii), 147, 148, 149 P.P.C r/w section 6/7 ATA in F.I.R No.36/2024 of PS Khipro District Sanghar is accepted and ad-interim bail already granted to the applicants vide order dated 04.06.2024 is hereby confirmed on the same terms and conditions. The learned trial court is directed to examine the material witnesses within one month without fail.

13. The observations made in this decision are tentative and will not influence the merits of the case.

JUDGE

JUDGE