

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Misc. Application No. S-502 of 2024
(*Paru Vs. Sagram & another*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing and order 26-09-2024.

Mr. Shankar Meghwar, advocate for the applicant/complainant
Mr. Kanji Mal Meghwar, advocate for respondents/accused
Mr. Dhani Bux Mari, A.P.G Sindh
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ORDER

Adnan-ul-Karim Memon, J. This Criminal Miscellaneous Application has been brought under section 497(5) Cr. P.C for the cancellation of bail granted to the private respondents by the learned Additional Sessions Judge-II, Tharpakar @ Mithi in Criminal Bail Application No.295/2024 vide order dated 24-08-2024 in crime No.10/2024 under sections 147, 148, 149, 337-F(vi), F(i), 506(2) & 504 PPC of P.S Jhun, District Tharparkar @ Mithi. For convenience's sake, an excerpt of the order is reproduced as under:-

“It is alleged that on the date of the incident, accused persons, assaulted upon complainant party, and specific role has been assigned to accused Sagram for causing hatchet blow to injured. Dahu (brother of complainant) received at his left hand's finger, and said injury in final MLC has been declared as *ghyr-jaifah-munaqillah* U/S 337-F(vi) PPC. Accused Chehno has been alleged to have caused hatchet blow at the left leg of complainant's brother. Rest are general type of allegations. Record further that sections applied in the FIR areailable except section 337-F(vi) & 506(ii) PPC, however, alleged offence does not fall within prohibitory clause U/s 497(i) CrPC. Even though alleged injury U/S 337-F(vi) is not on the vital part of body of injured, and same has been received on the finger, however, fabrication of such injury cannot be ruled out. The FIR is inordinately delayed by 12 days from the date of alleged incident, which creates doubt in the case and shows that the FIR has been lodged after due deliberation and consultation as per injuries declared in medico-legal certificate, therefore, prima facie, the case is fit for further inquiry into the guilt of accused and grant of bail in such like cases is a rule and refusal an exception. Furthermore, it is a settled principle of law that bail cannot be withheld as punishment and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Applicants/accused have joined the investigation and there is no previous criminal / convict record of applicants/accused.

For what has been observed above, the interim pre-arrest bail already granted to the applicants/accused by Hon'ble Sessions Court vide order dated 10-08-2024 stands confirmed on same terms and conditions.”

2. Learned counsel for the applicant/complainant has argued that there is sufficient evidence to link respondents to the crime; that respondents are

specifically named in the FIR with their roles; that the victim suffered serious injuries; that respondents have threatened and harassed the victim and witnesses; that the trial court erred in granting bail, considering the evidence and the severity of the crime; that this court should recall the bail order and detain the respondents; that the respondents' involvement is supported by evidence and witness testimonies; that the FIR clearly outlines their roles in the crime; that they have misused the privilege of bail; that this court may allow this Criminal Miscellaneous Application.

3. Learned counsel for the respondents submitted that it is alleged that the respondents assaulted the complainant party. It is also alleged that the accused Sagram caused a hatchet blow to the injured Dahu. It is also stated that Dahu (brother of the complainant) received a non-fatal injury on his left hand's finger. Accused Chehno caused a hatchet blow to the left leg of the complainant's brother. Per learned counsel, other allegations are general in nature. He added that sections applied in the FIR are bailable except for Section 337-F(vi) (grievous hurt) and 506(ii) (criminal intimidation). The learned counsel argued that the alleged offense does not fall within the prohibitory clause under Section 497(i) CrPC and that injury under Section 337-F(vi) was/is not on a vital part of the body and could be fabricated. The FIR is delayed by 12 days, raising doubts about its credibility. He emphasized that the case was/is fit for further inquiry into the guilt of the respondents, in such circumstances, the trial Court rightly granted bail to the respondents. Per learned counsel, bail cannot be withheld as punishment, and the law cannot be stretched in favor of the prosecution at the bail stage. He finally submitted that the respondents had joined the investigation and had no previous criminal record. He prayed for the dismissal of the Criminal Miscellaneous Application.

4. Learned APG is of the same view.

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

6. After perusing the material available on record, it appears that the offense was allegedly committed on 25.7.2024 and reported on 6.8.2024 delay of twelve (12) days, hence the deliberation and consultation for implicating

the accused cannot be ruled out. It further appears that injuries except for one falling u/s 337-F(vi) PPC (Ghair Jaifah Daimah), are bailable under the schedule of offenses while Section 337- F(vi) PPC, does not fall within the prohibitory clause of Section 497, Cr. P.C. is punishable with imprisonment for 07 years. So far the application of Section 506(ii), PPC is concerned, it is yet to be seen at trial after recording pro and contra evidence of the parties by the trial Court if the same attract at all in the facts of the case. There is no complaint of misusing the concession of pre-arrest bail granted to the respondents by the trial Court.

7. There is no denial to the fact that the Supreme Court since long has issued guidelines wherein the details of the considerations for the grant of bail and cancellation whereof are highlighted. This Court while handing down a judgment reported as Shahid Arshad Vs. Muhammad Naqi Butt (1976 SCMR 360) although found that the bail-granting order passed by the High Court is not sustainable in the eyes of the law and yet restrained to interfere in such order on the ground that there was nothing to show that the accused had misused the concession of bail. In a recent judgment reported as Samiullah Vs. Laiq Zada (2020 SCMR 1115), this Court has enunciated the following principles for cancellation/recalling of bail:-

- i) That is factually incorrect and has resulted in a miscarriage of justice.*
- ii) That the accused has misused the concession of bail in any manner.*
- iii) That the accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.*
- iv) That there is the likelihood of absconsion of the accused beyond the jurisdiction of the court.*
- v) That the accused has attempted to interfere with the smooth course of the investigation.*
- vi) That accused misused his liberty while indulging in a similar offense.*
- vii) That some fresh facts and material have been collected during the investigation with tend to establish the guilt of the accused.*

8. When I confronted the learned for the complainant to show from the record whether the private respondents have violated any of the above-said conditions based on which their bail can be canceled, they had no answer. In the Samiullah supra case, the Supreme Court further held that “ordinarily the superior courts are reluctant to interfere into the order extending concession of bail. The rationale behind this is that once concession of bail is granted by a court of competent jurisdiction then very strong and exceptional grounds

would be required to hamper with the concession extended to a person who is otherwise clothed with free life, any contrary action of the court would be synonymous to curtailing the liberty of such person, which otherwise is a precious right guaranteed under the Constitution of the country. The judicial system has evolved beside others the concept of "benefit of reasonable doubt" for the sake of the safe administration of criminal justice which cannot only be extended at the time of adjudication before the trial court or court of appeal rather if it is satisfying all legal contours, then it must be extended even at bail stage which is a sine qua non of a judicial pronouncement, hence, any unjustified action by the court of law intruding into the affairs would certainly frustrate the free life of an accused person after availing the concession of bail. It is not beyond the legitimate expectations that in our society mere leveling of accusation basing upon trumped-up charges is not something beyond imagination. Therefore, false implication/ exploitation which has become epidemic in our society has to be safeguarded by the majesty of the courts.

9. The learned trial Court in the impugned order has discuss these aspects of the matter.

10. In view of the law laid down by the Supreme Court, I am constrained to observe that the learned trial Court while the bail to the private respondents has not fallen into error.

11. For the aforesaid reasons, this Criminal Miscellaneous Application is dismissed.

J U D G E

(Ali Sher)