

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Bail Appln. No. S- 449 of 2012.  
Crl. Bail Appln. No. S- 460 of 2012.

Date of hearing	Order with signature of Judge
04.12.2012.	

For hearing.

Mr. Shahbaz Ali M. Brohi, Advocate for applicants.  
Mr. Ghulam Mehdi M. Sangi, Advocate for complainant.  
Mr. Abdul Rasheed Soomro, State Counsel.

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**Naimatullah Phulpoto, J:** By this single order, I intend to dispose of aforesaid bail applications moved on behalf of applicants/accused, as the same arise out of Crime No.64/2012, registered at P.S Laxhi Gate, District Shikarpur, under Sections 324, 337-H (2), 148, 140 P.P.C.

2. Brief facts of the prosecution case as disclosed in the F.I.R are that complainant has stated that he has dispute with accused Rehmatullah and others over the land and accused Rehmatullah and others were annoyed with complainant party. On 29.08.2012, at morning time complainant alongwith his brother Shahmore, nephews Rano and Taj Mohammad were going in Qingqi-Rickshaw to Shikarpur, when they reached at "Sim-Shaakh", they saw that accused persons were standing on side of the road. It is alleged that applicant/accused Abdul Ghafoor was armed with hatchet, Hamzo armed with gun, both sons of Man Dost, Abdul Khaliq, Rehmatullah both armed with hatchets and Yar Mohammad with lathi. It is alleged that accused Hamzo fired in air; thereafter accused Abdul Ghafoor, Abdul Khaliq and Rehmatullah caused hatchet blows to PW Shahmore on his head; applicant/accused Yar Mohammad caused lathi blows to PW Shahmore and he fell down. Complainant alongwith PWs: restrained accused persons not to kill the Shahmore. Thereafter, accused Hamzo and others made fires in the air and went away. Complainant saw that PW Shahmore had received hatchet and lathi injuries on his head and various parts of

his body and he took PW Shahmore alongwith other prosecution witnesses, to the police station Lakhi Gate, wherefrom he obtained letter for referring injured to the Civil Hospital, Shikarpur. PW Shahmore was then referred to Larkana hospital for further treatment, thereafter complainant returned to police station and lodged the F.I.R and stated that due to dispute over the land applicants/accused have attempted to kill Shahmore and caused him injuries. F.I.R of the incident was recorded on 30.08.2012 at 1600 hours, under sections 324, 337-H (2), 148, 149, P.P.C.

3. During investigation accused Abdul Khaliq was arrested and he applied for bail, and bail application was rejected by learned 1<sup>st</sup> Additional Sessions Judge, Shikarpur, vide order dated 26.09.2012. The applicants/accused Abdul Ghafoor, Rehmatullah and Yar Muhammad applied for bail before arrest before learned Sessions Judge, Shikarpur, the same was transferred to learned 1<sup>st</sup> Additional Sessions Judge, Shikarpur. Bail before arrest application was dismissed vide order dated 26.09.2012. Thereafter, applicants/accused have approached to this Court.

4. Mr. Shahbaz Ali Brohi. Learned Advocate for the applicants/accused has mainly contended that incident had occurred on 29.08.2012, at 9.00 a.m., but it was reported at Police station on 30.08.2012, at 1600 hours, and delay in lodging of the F.I.R has not been explained. It is further contended that medical evidence is contradictory to the ocular evidence; as per medical certificate issued by Dr. Iqbal Ahmed, Medical Officer RBUT Hospital, Shikarpur, all the injuries received by PW Shahmore were caused by hard and blunt substance. It is further submitted that there is dispute between the parties over the land and such fact is admitted in the F.I.R and all the family members have been implicated in this case. It is argued that in these circumstances, false implication of the accused cannot be ruled out. Lastly it is submitted that there are general allegations against all the applicants/accused. The case has been challaned. It is submitted that due to dispute over the land and material contradictions between the ocular and medical evidence, malafides

on the part of the complainant and police is apparent on record and ingredients for grant of bail before arrest are made out. In support of his contentions learned Advocate for applicants has relied upon case of Abdullah v. The State (2001 MLD 1554 Karachi), Aziz and 2 others v. The State (2007 P.Cr.L.J 299) and case of Hamid v. The State (2010 P.Cr.L.J 1700).

5. Learned State Counsel opposed the bail application. However he has stated that injuries have not been specifically attributed to any of the accused and argued that the alleged offence falls within prohibitory clause of section 497 Cr.P.C.

6. Mr. Ghulam Mehdi M. Sangi, learned Advocate for complainant did not oppose the bail application for accused Abdul Khalique, however, he opposed the bail application for remaining applicants/accused on the ground that ingredients for grant of pre arrest bail are not satisfied in this case.

7. I have carefully heard the learned counsel for the parties and perused the relevant record.

8. Record reflects that there is dispute between the parties over the land. There is inordinate delay of about 31 hours in lodging of the F.I.R, for which no plausible explanation has been furnished. Medical evidence is contradictory to the ocular evidence. It is the case of prosecution that applicants/accused had caused injuries with hatchet and lathi to the PW Shahmore but as per medical certificate, all the injuries sustained by PW Shahmore have been caused by hard and blunt substance. Moreover, no injury has been specifically attributed to any of the accused. Learned Advocate for complainant did not oppose the grant of bail to accused Abdul Khalique, who is in the custody. In these circumstances, no useful purpose will be served by remanding the present applicants/accused to jail on technical grounds, because even otherwise present applicants/accused also qualify for bail. In the above circumstances false implication of applicants/accused cannot be ruled out and benefit of doubt can be extended to accused at bail stage. While

relying upon the case law referred to above, I have no hesitation to hold that prima-facie case against the applicants/accused requires further enquiry as contemplated under subsection (2) of section 497 Cr.P.C. Ingredients for grant of pre-arrest bail to present applicants/accused, namely, Abdul Ghafoor, Rehmatullah and Yar Muhammad are also satisfied from the material available on record. Therefore, interim pre arrest bail already granted to them is hereby confirmed on same terms and conditions. Concession of the bail is also extended to the applicant/ accused Abdul Khalique on his furnishing solvent surety in the sum of Rs.100,000/- (One hundred thousand) and P.R bond in the like amount to the satisfaction of learned trial Court.

9. Needless, to mention here that the observations made hereinabove are tentative in nature and the learned trial Court shall not be influenced while deciding the case.

**Judge**