

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.B.A.No.S- 536 of 2010

DATE ORDER WITH SIGNATURE OF JUDGE

25.11.2013.

Applicants/accused are present on interim pre-arrest bail.
Mr. Abdul Sattar Sarki, Advocate for applicants.
Syed Meeral Shah, D.P.G. for the State.
Mr. Qurban Ali Bhutto, Advocate for complainant.

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NAIMATULLAH PHULPOTO, J:- Applicants/accused Muhammad Usman, Yar Muhammad and Dildar Ali seek pre-arrest bail in Crime No. 163/2010 registered at Police Station Shahdadpur U/s 337-A(i), 337-A(ii), 337-F(v), 147, 148, 149, 504 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that on the night of incident, complainant was standing outside of his house. He heard cries of his brother PW Gul Bahar from the graveyard side. He went there alongwith PWs Murad Ali and Roshan Ali and saw accused 1. Usman, 2. Yar Muhammad, 3. Dildar, 4. Dilber, 5. Ameer Bux and 6. Dost Ali, all by caste Khaskheli, they were armed with lathies and hatchets. It is alleged that applicants/accused caused hatchet and lathi blows to Gul Bahar on his various parts of the body. On inquiry PW Gul Bahar told the complainant that accused have caused him injuries on the demand of banana labour charges. Complainant went to the Police Station and lodged FIR in which it is stated that accused Usman and Yar Muhammad have caused hatchet blows to PW Gul Bahar and remaining accused caused lathi blows. FIR was lodged U/s 337-A(i), 337-A(ii), 337-F(vi), 147, 148, 149, 504 PPC.

3. Applicants/accused while apprehending arrest, applied for pre-arrest bail before the learned Additional Sessions Judge, Shahdadpur. Bail application was dismissed by him vide orders dated 15.07.2010. Thereafter, applicants/accused approached this Court.

4. Mr. Abdul Sattar Sarki, learned advocate for applicants/accused mainly contended that co-accused Dost Ali, Dilber and Ameer Bux have already been granted post arrest bail by Civil Judge & Judicial Magistrate-I, Shahddpur and the case of applicants/accused is identical to the case of co-accused. He has further submitted that there are general allegations against the applicants/accused in the commission of offence. Alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Serious malafide on the part of complainant and police have been alleged and it is stated that investigation has been completed in this case. It is contended that there is conflict between ocular and medical evidence. No injury caused by sharp cutting weapon has been sustained by injured. In support of his contentions, learned defence counsel has placed reliance on the cases reported as Ehsan Akbar v. The State and 2 others (2007 SCMR 482), Murtaza v. The State (2004 MLD 1875) and Gulab and 2 others v. The State (2006 P.Cr.L.J 1028).

5. On the other hand, Syed Meeral Shah, learned D.P.G. assisted by learned advocate for complainant, argued that names of the applicants/accused transpire in the FIR with role played by them in the commission of offence. He has further argued that ocular evidence is corroborated by medical evidence and no case for grant of pre-arrest bail is made out. He has strongly opposed the application. In support of his contentions, learned D.P.G. relied upon the cases reported as Jaffar Hussain and others v. The State (2007 P.Cr.L.J 615), Muhammad Zubair alias Bago and 4 others v. The State (2005 YLR 666) and Muhammad Yousaf, etc v. The State, etc (2004 Cr.L.J 1101).

6. I am inclined to confirm the interim pre-arrest bail to the applicants/accused for the reasons that co-accused Dost Ali, Dilber and Ameer Bux have already been granted bail by the trial Court in this case. The case of applicants/accused is almost identical to that of co-accused. There is apparently contradiction between the ocular and medical evidence. According to medical certificate issued by Dr. Ghulam Hussain Khaskheli, Medical Officer, Institute of Medical Sciences, Shahdadpur, all the injuries sustained by Gul Bahar were caused by hard and blunt substances.

According to prosecution case, above named accused caused injuries by means of hatchet. Alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. In such cases, grant of bail is the rule and refusal as an exception. Moreover, serious malafide on the part of complainant party and police have been alleged and dispute is admitted in the FIR. Interim pre-arrest bail has been granted to the applicants/accused by this Court vide orders dated 26.07.2010 and till today applicants/accused appear before this Court regularly and the concession of interim pre-arrest bail has not been misused. Investigation is complete. Remand of applicants/accused to the jail on technical grounds would not serve any purpose.

7. Therefore, while relying upon the case law cited by learned counsel for the applicants/accused and looking to the facts and circumstances of the case, I hold that prima facie, the case for grant of pre-arrest bail to the applicants/accused is made out. Resultantly, interim pre-arrest bail already granted to the applicants/accused is hereby confirmed on same terms and conditions.

8. Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the trial Court at the time of deciding the case on merits.

9. These are the reasons for short order announced by me today during early hours of the day.

JUDGE

Tufail