

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Bail Application No.S-114 of 2024

Applicants/ accused: 1. Abdullah s/o Dilawar.

2. Uris s/o Gul Muhammad.

3. Imdad s/o Hussain Bux.

4. Aijaz s/o Hussain Bux.

Through Mr. Jan Muhammad Nohri Advocate,

Respondent: The State

Through, Mr. Ghulam Abbas Dalwani,

Deputy P.G Sindh

Date of hearing: 27.02.2025.

Date of Order: 27.02.2025.

ORDER

Dr. Syed Fiaz ul Hasan Shah, J: The applicants/accused namely Abdullah, Uris, Imdad and Aijaz (hereafter referred as “applicants”), after the dismissal of their pre-arrest bail application No. 352/ 2024 vide order dated 27-05-2024 by learned Additional Sessions Judge-I, Umerkot, arising from F.I.R. bearing Crime No. 10 of 2024 registered under Sections 324, 353,506(ii), 147,148,149,427,504 P.P.C with Police Station Ghulam Nabi Shah, have preferred the above bail application.

2. As per the facts of the F.I.R. lodged by complainant SIP Punhal Khan Rahimoon on 25-04-2024 at 2345 hours at Police Station Ghulam Nabi Shah are that on the same day, he along with his subordinate staff namely HC Muhammad Usman and PC Muhammad Ramzan so also police party of PS Dhoro Naro headed by Inspector Riaz Ali Laghari and

police party of PS Pithoro headed by ASI Naseem Ahmed so also witnesses of Crime No.09/2024 registered under sections 452, 365-B, 147,148,149,506(ii),504 PPC left the PS in official vehicles vide entry No. 16 at 2115 hours and when reached at village Dilawar Mangrio near Government school at 2200 hours where witnesses of above-mentioned case identified Abdullah Mangrio, Urs Mangrio, Imdad Mangrio, Aijaz Mangrio, Farooque and 5/6 unknown persons duly armed with pistols, hatchets, lathies and bricks' pieces came out from the school. They stopped their vehicles and alighted from the same, whereupon above named accused attacked upon the police party with lathies and hatchets and thrown bricks and stones on official vehicles, while accused Abdullah Mangrio and Urs Mangrio made direct fires from their pistols upon them with intention to kill them but they saved themselves by falling on the ground. Due to heavy population in the surrounding of police party did not retaliated fire. Then accused persons went away while giving abuses and threats. Later, the police party inspected the vehicles and found that front windscreen of police mobile of PS Pithoro was broken and its body also sustained damage while the rear glass and lights of mobile of PS Dhoronaro had been broken. The police official had returned at PS where complainant had lodged instant FIR. Hence, instant bail application.

3. Learned counsel for the applicants contended that applicants have been falsely implicated in this case with malafide intention and ulterior motives, that it is quite strange that in the alleged attack neither any police personnel nor accused received any injury; that co-accused Farooque has been shown in column No.2 of the challan; that the case of

the applicants requires further inquiry. In conclusion, the learned counsel prayed for the confirmation of bail to the applicants.

4. On the other hand, the learned Deputy Prosecutor General vehemently opposed the bail application by arguing that the applicants are nominated in the F.I.R with specific allegation; that the alleged offence falls under the prohibitory clause of Section 497(1) Cr.P.C. Lastly, he prayed for the dismissal of the instant bail application.

5. Admittedly it is case of ineffective firing wherein neither police official has suffered any casualty or injury nor applicants /accused. As far as allegation regarding damage of front windscreen so also rear glass and lights of police mobiles is concerned, no photograph has been procured by the I.O. Furthermore, FIR of the police encounter has been registered by nominating applicants with their names and caste it does not appeal to a prudent mind that how police or raiding police party have conveniently been identified the names and parentage of persons at crime scene. As per contents of subsequent FIR No.10/2024, the names of two independent witnesses have informed the police about the presence of the Applicants/Accused and wanted to be arrested in FIR No.9/2024, even nothing has brought on record from these two independent witnesses. Moving ahead, it is surprising that police officials including duty officer have come to know about the names and parentage of the Applicants so also their confirmed identification which ultimately led to nominate the Applicants in subsequent FIR No.10/2024 who have allegedly attacked the police mobiles, but nothing has stated in statements, except to bear in mind the fact that applicants are nominated in earlier Crime No. 09/2024. Prima facie, elements of malafides attached.

6. Another aspect of the case is that one of the nominated accused Farooque son of Yar Muhammad has been placed in column No.2 whereas in the FIR, although the role of Accused Farooque is the same which has jointly attributed to the applicants/ accused. In other words, the case of the Applicants is at par with accused Farooque son of Yar Muhammad. It is rule of criminal jurisprudence that all accused with same roles may not be allowed to treat differently by pick and choose. Admittedly, accused are nominated in the FIR with same role, however, the prosecution has exonerated one of the Accused namely Farooque son of Yar Mohammad by placing his name in column No.2 which is exclusive column for accused against whom the evidence is not sufficient to charge.

7. The principles of doctrine of rule of consistency or equal treatment can apply by courts in criminal case of post-arrest bail are now attracted in pre-arrest bails. The concept and principles are now ruled and laid down by the Hon'ble Supreme Court of Pakistan¹ in the authoritative judgment and it has been held and elaborated the extensive application of doctrine of rule of consistency is also applicable in the case of pre-arrest bails. The conducive portion delineated hereunder:

As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the

¹ Jamaluddin Rabail v. The State (Criminal Petitions No.41-K & 42-K of 2023)

cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The State through Prosecutor General of Punjab and another (2022 SCMR 1424).

The principles of grant of concession of pre-arrest bail has been elaborated by the Supreme Court of Pakistan in case of ***Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427)*** that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the Applicant were refused bail, such an order would from some ulterior motive with the object of injuring the Applicants, or that the Applicant would in such an eventuality suffer irreparable harm. Therefore, the present case squarely falls within parameters of above principles laid down by the august court. The applicants are granted and confirmed the concession of pre-arrest bail on same terms and condition in respect of surety and PR Bond on which the Applicants have already granted interim pre arrest bail by this Court vide Order dated 07-06-2024. Needless to say that observations made or referred hereinabove are tentative in nature and the trial Court will not influence from it and will decide the case on its merits and in accordance with law.

JUDGE

Saleem