IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Crl. Bail Appln. No. S- 745 of 2023.
Crl. Misc. Appln. No. S- 329 of 2023.
Crl. Misc. Appln. No. S- 443 of 2023.
AND
Crl. Misc. Appln. No. S- 02 of 2024.

Date of hearing	Order with signature of Judge

01.04.2024.

Mr. Azhar Hussain Abbasi, Advocate for applicant Yahya Brohi in Crl. Bail Appln. No. S- 745 of 2023.
Mr. Asadullah Arbani, Advocate for applicant in Crl. Misc. Appln. No. S- 329 and 443 of 2023.
Mr. Muhammad Afzal Jagirani, Advocate for applicants in Crl. Misc. Appln. No. S- 02 of 2024.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

ORDER

Muhammad Saleem Jessar, J: Since, captioned four applications are outcome of one and same crime i.e. F.I.R No. 61 of 2023 registered at P.S Khanpur (*District Shikarpur*), for offenses punishable under Sections 302, 337-A (i), 337-F (i), 114, 147 and 148 P.P.C., as such these are disposed of by this common order.

2. Crl. Bail Appln. No. S- 745 of 2023 has been filed on behalf of applicant Yahya son of Guhram Khan Brohi under Section 497 Cr.P.C., seeking his release on bail.

3. Whereas Crl. Misc. Appln. No. S- 329 of 2023 has been filed on behalf of Abdul Qudoos Brohi (complainant) under Subsection (5) of Section 497 Cr.P.C, seeking cancellation of bail granted to accused/ respondents Jameel Ahmed and Tarique alias Tarique Khan.

4. While Crl. Misc. Appln. No. S- 443 of 2023 has also been filed on behalf of Abdul Qudoos Brohi (complainant) under Subsection (5) of Section 497 Cr.P.C, seeking cancellation of bail granted to accused/ respondents Zafarullah and Zubair.

5. And, Crl. Misc. Appln. No. S- 02 of 2024 has been filed by accused/ applicants Jameel Ahmed and Tarique Khan, against the Order dated 28.10.2023 passed by learned Judicial Magistrate Khanpur on a Police-Report under Section 173 Cr.P.C, whereby the learned Magistrate took cognizance of the offense and joined them as accused in the case.

6. Heard learned counsel for respective parties and perused the material available on the record.

57

7. *Firstly*, Crl. Bail Appln. No. S- 745 of 2023 is taken up. After scanning the available record in the light of arguments, I have observed as under: -

(a) The allegations against applicant Yahya is that he along-with the co-accused while armed with lathi came at the place of incident and caused lathi-blows to PWs Zahid and Abdullah.

(b) The applicant Yahya has not been assigned role of causing injury to the deceased, whereas the injuries allegedly assigned to applicant sustained by PWs Zahid and Abdullah have been declared as Shajjah-I-Khafifah, Jurh Ghayr Jaifah Damiyah and Jurh Ghayr Jaifa Mutalahimah, carrying punishment, which do not come within prohibition as contained in Section 497 Cr.P.C.

(c) The co-accused Zafarullah and Zubair have been granted bail by learned Court below and case of applicant Yahya is mostly on same footings.

(d) In the body of FIR, the animosity between the parties is admitted, which is sufficient to support the plea of malice and ulterior motives.

8. As a sequel to the above observation, I have found the case against the applicant/ accused Yahya, a case for further probe. Consequently, he is granted bail upon his furnishing a solvent surety in the sum of Rs.300,000/- (*Three hundred thousand rupees*) and P.R bond in the like amount to the satisfaction of trial Court.

9. *Now*, Crl. Misc. Appln. No. S- 329 and 443 of 2023 are taken up. These criminal miscellaneous applications have been filed by complainant seeking cancellation of bail granted to accused/ respondents Jameel Ahmed, Tarique alias Tarique Khan, Zafarullah and Zubair. The learned counsel for complainant could not show any substance for canceling the bail granted to these accused/ respondents. On scrutinizing the material on record, it appears from the record that accused Jameel Ahmed and Tarique alias Tarique Khan have not been assigned any active role of causing any injury to any member of complainant party including the deceased except role of only instigation, therefore, question of their common intention and vicarious liability would be determined after recording evidence. Whereas, accused/ respondents Zafarullah and Zubair have also not been assigned role of causing injury to the deceased. Accused Zafarullah has been assigned role of causing lathi blow to PW Abdul Latif (though as per contents of F.I.R he was allegedly armed with iron-clip). While, accused Zubair has been assigned role of causing lathi blow to PW Abdul Raheem. Therefore, question of their sharing common intention with principal accused, who is alleged to have caused injuries to deceased, would also be determined at trial. In the given circumstances, the learned Court below was justified in granting the bail to these accused/ respondent. I do not see any merit in these applications (*Crl. Misc. Appln. No. S- 329 and 443 of 2023*), which are hereby dismissed.

10. *Lastly*, Crl. Misc. Appln. No. S- 02 of 2024 is taken. This application has been filed by applicants/ accused Jameel Ahmed and Tarique Khan against the Order dated 28.10 ..2023 passed by learned Judicial Magistrate Khanpur on Final-Report

under Section 173 Cr.P.C, whereby the learned Magistrate took cognizance of the offense and joined them as accused in the case. It has come on record through progress-report furnished by the learned trial Court that, the "charge" in the case has already been framed against all accused persons including these two applicants, namely, Jameel Ahmed and Tarique Khan and presently the case is fixed for recording evidence. It is well settled principle of law *by now* that, when trial Court has already taken cognizance of the offence, the proceedings (F.I.R) could not be quashed and when the alternate remedy is available, that must be availed at first instance. And, in eventuality the case has been challaned, the accused persons should at-first avail the remedy under Sections 249-A and 265-K Cr.P.C. The reference in this regard can be had from cases reported as *Muhammad Abbasi v. SHO Bhara Kahu and 7 others* (PLD 2010 Supreme Court 969) and *Director General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others* (P.L.D 2013 Supreme Court 401). Accordingly, in view of above legal position, this criminal miscellaneous application also stands dismissed.

11. All these four applications are disposed of in above terms. However, it is needless to mention that observations made in this order are tentative and shall not prejudice the case of either party at trial.

Judge

Amari