

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 994-B of 2020.

Hamza Ahmad, etc.

VERSUS

The State, etc.

| S.No. of order/ Proceeding | Date of hearing | Order with signature of Judge, and that of parties or counsel, where necessary. |
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24.09.2020. Mr Zahid Riaz Chaudhry, Advocate alongwith the petitioner.
Rao Abdul Raheem, Advocate for the complainant.
Mr Sadaqat Ali Jahangir, State Counsel.
Mr Muhammad Iqbal, SI with record.

The petitioners namely, Hamza Ahmad and Armaghan Ahmed Mughal sons of Naseer Ahmad have sought pre-arrest bail in case, F.I.R. No. 196, dated 19.06.2020, registered under sections 337-F(v), 506(ii)/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Banni Gala, Islamabad.

2. Brief facts as narrated in the FIR are that on 16.06.2020, the petitioners threatened the complainant. Hamza Ahmed injured the complainant with an iron bar while the other petitioner was armed with a firearm weapon. Hence the instant FIR.

3. The learned counsel for the petitioners has contended that; the latter have been falsely involved in the instant case with malafide intention and ulterior motives; story as narrated in the FIR is false, frivolous and vexatious; there is delay of three days in registration of the

instant case; the petitioners are real brothers and the complainant is their
tive; there exists previous enmity between the parties; the instant
case has been registered to humiliate and harass the petitioners; the
petitioners are innocent and they have not committed the alleged
offences; offences do not come within the ambit of prohibitory clause of
section 497 of Cr.P.C.; the petitioners have joined the investigations;
there is no chance of abscondance of the petitioners or tampering with
the prosecution evidence; the instant case has been registered against the
petitioners with the connivance of police; the petitioners have no criminal
record; ingredients of alleged offences are not fulfilled; there is no
incriminating material against the petitioners. The learned counsel has
prayed for confirmation of the pre-arrest bail already extended to the
petitioners vide order, dated 17.09.2020. Reliance has been placed on the
case "*Khalil Ahmed Soomro and others vs. The State*" [PLD 2017 S.C.
730].

4. The learned State Counsel assisted by the learned counsel
for the complainant appeared alongwith Muhammad Iqbal, SI. They have
opposed the confirmation of pre-arrest bail. It has been argued that; the
offences are cognizable in nature; the petitioners did not appear before
the learned Additional Sessions Judge, Islamabad at the time of
announcement of his pre-arrest bail petition; the petitioners are
nominated in the FIR with specific role; no malafide has been pointed out
by the petitioners against the complainant, so as to make out a case for
the grant of pre-arrest bail; hence prayed for the dismissal of the pre-
arrest bail. Reliance has been placed on the case "*Haji Ghulam Rasul vs.
Muhammad Abbas and another*" [2005 P.Cr.L.J. 588].

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The petitioners are related to each other and they are entangled in a civil dispute. A suit relating to dispute between the parties is pending before a competent court. It cannot be ruled out that the criminal case may have been registered to merely humiliate the petitioners because of the pending civil dispute. No injury has been attributed to one of the petitioners while the role of the other requires further probe. This Court is guided by the law laid down by the august Supreme Court in case titled "*Rana Muhammad Arshad versus Muhammad Rafique and another*" [PLD 2009 S.C. 427]. In the light of the principles and law enunciated by the apex Court, a case is made out to exercise discretion in favour of granting the relief and consequently confirming the ad-interim bail.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances, as mentioned above, this petition is ***allowed*** and the ad-interim bail already granted to the petitioners is ***confirmed***, subject to furnishing fresh bail bonds in the sum of Rs.50,000/- (Rupees fifty thousand only) each with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings, before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**