

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S-283 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on O/objection at flag-A
2. For hearing of bail application

Date of hearing 06.08.2021

Mr. Shoukat Ali Makwal Advocate for applicant.
Mr. Naseem Ahmed Siyal Advocate for complainant.
Mr. Aftab Ahmed Shar Addl.PG for State.

ORDER

Muhammad Saleem Jessar, J; Through this application, applicant Dado Adam son of Muhammad Qasim Abbasi seeks his release on bail in Crime No-39/2021 registered at Police Station "B" Section, Khairpur for offences punishable under Sections 324, 114, 34 PPC

2. After completion o investigation the case has been Challaned which is now pending before the Court of Additional Sessions Judge-II, Khairpur Mirs vide Sessions Case No.297 if 2021 (Re: The State v. Muhammad Nawaz Kalhoro and others). The applicant alongwith co-accused filed Criminal Bail application No-490/2021 before the Court of Sessions where he was admitted to ad-interim pre-arrest bail on 17.02.2021; however, after hearing the parties, the bail application filed by the co-accused was granted and interim bail granted to them was confirmed on same terms and conditions; however, bail application filed by the present applicant was dismissed and ad-interim order dated 17.02.2021 was recalled by a common order dated 10,03.2021. Thereafter, the applicant preferred Criminal Bail application No.S- 169/2021 before this Court, which, by means or order dated 05.04.2021, was dismissed and by recalling interim bail dated 15.03,2021 he was taken into custody. Therefore. the applicant

preferred second post arrest bail before learned trial Court, which met with same fate vide order dated 26.04.2021.

3. During investigation, co-accused Abdul Sattar and Shahmir alias Shamo were found innocent by the police, therefore, they were let-off; however, the I.O submitted such report in terms of Section 173 Cr.P.C before the Magistrate concerned, who did not concur his opinion with the police report, therefore, has joined them as accused.

4. The facts of the prosecution case in nutshell are that on 15.02.2021, complainant Inayatullah Abbasi lodged FIR bearing Crime No.39/2021 at Police Station "B' Section, Khairpur, stating therein that on 14.02.2021 he along with his nephew Abdul Qayoom and Khalid Mehmood were returning towards their house. At about 1900 hours, when reached near the lands of Mir Muhammad Shaikh, they were controlled by the above named applicants / accused duly armed with gun and pistols. It is further stated that the applicant / accused Shahmir instigated to co-accused not to spare the complainant and at his instigation all the accused made straight fire upon him with their respective weapons. He further stated that the fire shot of applicant/ accused Adam Kalhoro hit him on his left side abdomen and then he fell down, on which they raised cries and thereafter all the accused made their escape good. The motive being alleged by complainant is a dispute over credit amount between the complainant and applicant / accused Adam Kalhoro. Hence, this FIR.

5. Learned Counsel for the applicant submits that FIR is delayed for about 24 hours and no plausible explanation has been furnished by the prosecution for such an inordinate delay. He further submits that the parties are known to each other and the dispute as admitted by the complainant was over money transaction. He next submits that complainant has not disclosed specific transaction for which he lended or borrowed the amount to the accused nor specified the amount in his FIR. He also submits that the injury allegedly sustained by the complainant is self-suffered and therefore the applicant had challenged the Medico Legal Certificate before the Special Medical Board, where the complainant was avoiding to appear; however, the board put the certificate in abeyance. He further points out that the

charge against accused has been frame by the trial Court on 23.04.2021 and yet not a single witness has be produced by the complainant to proceed with the trial. He further adds that injury allegedly attributed to applicant has been declared by the Medico Legal Officer constitutes an offence under Section 337-F(iii) PPC, which provides punishment upto three years; hence, does not exceed the prohibitory clause of Section 497 Cr.P.C. Learned Counsel also submits that applicant is Government Servant and if he is admitted to bail then the question of his absconding from the proceedings does not arise. In support of his contentions he relied upon case of Shahid v. The State and another (2017 YLR 2486), Amjad Ali v, The State and another (2010 YLR 1638), Ghutam Abbas alias Abbas and another v. The State (2007 YLR 903), Shakeel Shah v. The State (2017 P.Cr1.1J 1658), Zahidunah v. The State (2021 YLR 102). Beejal and another v. The State (2014 P.Cr.LJ 261 Sindh) and Ali Muhammad v. The State (201 J YLR 1091).

6. Mr. Aftab Ahmed Shar. learned Additional Prosecutor General appearing for State opposes the bail application on the ground that accused has been assigned specific role of causing fire arm injury to the complainant which landed on his flank, therefore, he does not deserve any leniency in the shape of his release on bail. He, however, admits that accused did not repeat the injury. He further submits that the punishment provided by the law for the Section 337 -F(iii) PPC is three years, which does not exceed the limits of prohibitory clause of Section 497 Cr.P.C.

7. On the other hand, Mr. Naseem Ahmed Siyal, Advocate for complainant, opposes this bail application on the ground that accused is Police Constable, therefore, by misusing his worthy has made assault upon complainant and aimed to commit his Qatl-e-Amd. He further submits that no other case is pending against the accused except this one. He; however, could not controvert the fact that the injury was not repeated by the accused as well as co-accused and even the amount allegedly given by the complainant to him has not been specified. He also submits that delay as claimed by the accused has been explained by the complainant, therefore, this ground is not helpful to the accused. In support of his contentions, he relied upon case of Khair Muhammad alias Khairoo v. The state (2003 MLD 1789), Muhammad

Naeem v. The state (2005 YLR 3182), Zia v. The state and another (2008 P.Cr.LJ 848), Ayaz Shah v. The State and another (2010 MLD 804), Gulzar and another v. The State and another (2011 YLR 2823), Zahoor Illahi and another v. Shahzad Ahmed and another (2007 P.Cr.LJ 1056) and Jamaluddin v. The State and another (1999 P.Cr.LJ 973).

8. I have considered the arguments advanced by learned Counsel for parties and have gone through the record. It is admitted that accused and complainant are cast fellows and are the resident of same locality. Besides, they are on strained relations over money transaction, which is admitted in the FIR. Allegedly, four accused duly armed with lethal weapons came at spot and only one person (applicant) made straight fire upon the injured, who sustained one injury on his flank. The seat of injury as shown could be termed as vital part; however, nature of injury as is apparent, is superficial and was not dangerous or detrimental to the life of injured, even Medico Legal Officer did not opine it to be detrimental, therefore, the question here arises as to whether the accused had any intention to commit Qatl-e-Amd of injured or otherwise, if yes, then they should have repeated fire arm but there is no such case of repeating fire. The injury allegedly sustained by injured has been opined by the Medico Legal Officer falls within the definition of Section 337-F(iii) PPC, which carries maximum punishment upto three years. As far as the question of application of Section 324 PPC is concerned, it is yet to be determined by the trial Court after recording evidence of the parties. Per progress report furnished by the trial Court dated 08.07.2021; charge against accused was framed on 23.04.2021 and since then not a single witness has been examined, though the process has been issued repeatedly to the complainant as well as witnesses. The veracity of medico-legal certificate was challenged by the accused before Special Medical Board where due to non-appearance of injured / complainant, medical certificate issued by Dr. Khoobchand SMO, KMC, Khairpur was kept in abeyance / suspended in terms of order dated 28.06.2021. Again, upon the directions of this Court, complainant was forced to appear before the Special Medical Board for his examination; though, as per statement of the complainant, as well as his Counsel, he appeared before the board on 03.07.2021, yet more than a month has been elapsed, the board has not issued their report. Such conduct

and apathy on the part of State functionaries is really a mark of misconduct. Since the accused is in custody, therefore, he cannot be kept behind bars for an indefinite period without progress in his trial. As far as, nature of injury as well as allegations of instant case are concerned, I am fortified with the view / dicta laid down by the honourable Supreme Court of Pakistan in the case of **Khalil Ahmed Soomro and others v. The State (PLD 2017 SC 730)** and is of the opinion that case against applicant requires further inquiry. Moreover, the punishment provided by the law for the injury allegedly sustained by the complainant does not fall within the ambit of Section 497 Cr.P.C and in such like cases, the grant of bail becomes right and refusal will be an exception. In the circumstances and in view of dicta laid down by the honourable Supreme Court in case of Muhammad Tanveer v. The State and other (PLD 2017 Supreme Court 733) followed by the case of Iftikhar Ahmed v. The State vide Criminal Petition No.529 of 2021 and order dated 14.07.2021, the applicant is entitled for bail. So far as, the case law relied upon by the Counsel for complainant is concerned, which appears to be distinguishable and has no relevancy with the facts and circumstances of the instant case.

9. The upshot of the above discussion is that the applicant prima facie has made out a good case for his release on bail. Consequently, this bail application is allowed. The applicant Dado Adam alias Adam son of Muhammad Qasim Abbasi is ordered to be released forthwith subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) and P.R Bond in the like amount to the satisfaction of learned trial Court.

Bail Application stands disposed of in above terms.

JUDGE