

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S- 1020 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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06.02.2023.

Mr. Zulfiqar Ali Buriro, Advocate for applicant alongwith applicant (on bail).

Ms. Safa Hisbani, A.P.G for State.

Mr. Javed Chaudhry, Advocate for complainant.

ORDER

Mohammad Karim Khan Agha, J.- The applicant Mst. Nusrat Bano is being tried by the Court of IInd Additional Sessions Judge, Mirpurkhas in Sessions Case No.398/2022 in respect of Crime No.91/2022 relating to P.S Satellite Town Mirpurkhas for offences u/s 324, 506(ii), 504, 147, 148, 149, 337-D, 337-V(2), 380 PPC. The applicant's pre-arrest bail application was recalled by the learned trial Court vide order dated 23.09.2022. Hence the applicant has approached this Court for pre-arrest bail.

2. Brief facts of the prosecution case as disclosed by complainant Khamiso Khan in his FIR are that he owns a cement shop. About 22 years back he was married with Mst. Nusrat Bano d/o Khalid Hussain. They have two sons and two daughters. After marriage, his wife used to fight with him. On 30.06.2022, he and his son Umair and Khuzama Khan after getting free from his shop, went to the house of Mubarak Khan Mohallah Orangaabad near Adil School, Street No.5 MLK. Thereafter they went to his brother's house namely Anees Khan at about 12-15 a.m. His wife with her brothers namely Sadiq Hussain and others said him that you are going to get the amount of 10 lacs from Lottery on which complainant told them that such amount he will invest on his business and will not give them. On such refusal they became annoyed and his sister in law namely Mst. Fatima and brother in law Shahid Hussain picked up valuable items of his house and thrown on the face of complainant which caused to fall some hair of his beard. In the

meantime, his wife with intent to commit his murder picked up a knife and stabbed him in stomach then his brother in law Shahid Hussain took the knife out of his stomach and tried to stab him again in the stomach but the complainant stopped and pushed him away then his brother in law Shahid Hussain alongwith two unknown persons punched and kicked him and threatened him that if he does not give them such amount they will kill him and then they went away in the northern direction. Thereafter, complainant's sons Umair Khan and Khuzama took him to police station where he got medical letter of his wounds and went to the Civil Hospital Mirpurkhas from where he was referred to Civil Hospital, Hyderabad. After getting proper treatment he came back home where he saw all the things messed up and came to know that 16 Tola Gold, cash worth Rs.35,00,000/- and ownership deed of his house, cheque book, license of 9mm pistol etc were missing from home which his wife had taken away. Afterwards his wife lodged an FIR against him at Satellite Police Station bearing Crime No.85/2022 u/s 337-A(i), 337-F(i), 504, 506(ii), 34 PPC. He then got pre-arrest bail and then came at Police Station Satellite Town where he lodged instant FIR against his wife Nusrat Bano that she tried to stab him with a knife with intent to murder and his brother in law Shahid Hussain cut hair from his beard and his sister in law Fatima and his brother in law Sadiq Hussain and two unknown persons to whom he can recognize if seen again, they beat him and threatened to murder him.

3. Learned counsel for the applicant contended that applicant is innocent and has falsely been implicated in the case in hand; that the FIR is delayed for 09 days for which no plausible explanation has been furnished; that there are counter FIRs as the applicant has also lodged FIR against the complainant; that pre-arrest bail of other three co-accused has been confirmed by the trial Court and only the present applicant was refused as such he submits that on the rule of consistency applicant is also entitled for confirmation of her pre-arrest bail. In support of his contentions, learned counsel places reliance on the cases of **Javed Iqbal V The State through Prosecutor General of Punjab** and **another** (2022 SCMR 1424), **Muhammad Yousaf alias Kalay Khan V The State** (2004 P.Cr.L.J 1862), **Naveed Masih V The State** and

another (2011 P.Cr.L.J 1198), **Gul Wali V Qaza Khan and another** (2000 MLD 98) and **Ali Muhammad V The State** (2011 YLR 1091).

4. On the other hand, learned A.P.G assisted by learned counsel for the complainant vehemently opposed the grant of pre-arrest bail to the applicant on the ground that rule of consistency is not applicable in this case as the role of applicant is totally different to that of co-accused who have been granted pre-arrest bail by the learned trial Court; that delay in lodgment of FIR has been explained by complainant as after sustaining injuries he was admitted in hospital; that blood stained clothes of injured and knife were also secured by I.O. In support of their contentions, reliance has been placed upon the cases of **Arif Din V Amil Khan and another** (2005 SCMR 1402), **Imtiaz V Azam Khan and others** (2021 SCMR 111) and **Allahdino and 6 others V The State** (2003 P.Cr.L.J 135).

5. I have heard the parties and perused the record.

6. I find that rule of consistency is not applicable in this case as the other co-accused who have been admitted to pre-arrest bail had much lesser role than that of present applicant who as per FIR directly stabbed her husband with intent to murder him. Admittedly there is a delay of 09 days in lodging of the FIR however, this has been fully explained by the provisional and final medical certificate which shows that the complainant / injured was admitted in hospital and was subjected to examination of wounds which as per FIR were determined and amounting to wounds falling under Section 337-D PPC. The applicant has also been charged with attempt to murder, both of which offences fall within the prohibitory clause. The blood stained clothes were recovered as well as knife. The version of complainant is supported by Section 161 Cr.P.C statements of PWs Umair Khan and Khuzama Khan. No malafide has been suggested on the part of complainant and it appears that the incident was a result of complainant's refusal to handover the lottery money which is said to have angered the applicant and co-accused who stabbed him. I also find that the FIR lodged by the applicant to be a counter blast in the existing case which in any event was disposed of in 'C' class.

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7. The case law relied upon by learned counsel for the applicant is distinguishable from the particular facts and circumstances of this case and the case law relied upon by learned A.P.G and complainant however, is more applicable.
8. As such, I find that there is sufficient evidence to connect the applicant with the crime and since there has been no malafide, the instant criminal bail application is dismissed and the interim pre-arrest bail already granted to the applicant is hereby recalled with immediate effect.
9. It is noted that that this is only a tentative assessment of the evidence which shall have no bearing upon the merits of case which shall be decided by the trial Court based on the evidence which is led before it.
10. The learned trial Court is directed to decide this matter expeditiously but in any event within six (06) months of the date of this order. Since the charge has been framed the trial Court shall immediately proceed to record the evidence of the complainant and other PWs / I.O. A copy of this order shall be sent to learned 2nd Additional Sessions Judge, Mirpurkhas for compliance.
11. This pre-arrest bail application is disposed of in the above terms.