

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st. Crl. Bail Appln. No.S-445 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

01.12.2023

Mr. Rafique Ahmed K. Abro, advocate for the applicant.

Mr. Ali Anwar Kandhro, Addl. P.G, Sindh.

M/s. Imdad Ali Tunio & Mujahid Ali Tunio, advocates for the complainant.

ORDER.

MUHAMMAD SALEEM JESSAR, J.- Through this application, applicant Altaf Ahmed son of Habibullah Soomro, seeks his release on bail in Crime No.39/2023, registered with Police Station B-Section Thull, (District Jacobabad), under Sections 324, 504, 337-H(ii), 337-F-(iii), 34, PPC.

2. The applicant was arrested by the police on 26.06.2023 and after completion of usual formalities the police have submitted the challan before the Court having jurisdiction on 13.07.2023, which is now pending for trial before the Court of Additional Sessions Judge, Thull vide Sessions Case No.375/2023 Re-Altaf Ahmed Soomro and others. The applicant along with co-accused filed anticipatory bail application bearing No.598/2023 before the Court of Sessions Jacobabad, where-after hearing the parties the bail of co-accused Aftab Ahmed @ Malhoo and Abdul Hameed was allowed, whereas, prayer so made by the applicant was declined, then he filed post arrest bail application before the trial Court bearing No.655/2023, who after hearing the parties turned down the request for his release on bail in terms of its order dated.02.08.2023.

3. Pursuant to directions, the trial Court has submitted progress report which reveals that no charge has been framed.

4. Learned counsel for the applicant submits that the alleged incident as is evident from the FIR had occurred on 03.06.2023 at 08:00a.m, whereas the FIR thereof was lodged on 10.06.2023 at 11:15 am, with the delay of about seven days for which no plausible explanation has been furnished by the prosecution for such an

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inordinate delay. He next submits that injured PW, namely, Miss Sameena herself appeared at Police Station on 03.6.2023 at 0750 hours of the morning i.e. ten minutes before occurring of incident, as per FIR. Such entry bearing No.32 dated.03.6.2023 has been submitted by the counsel under the cover of his statement dated.26.10.2023. He further submits that though the applicant has been assigned specific role of causing firearm injury to injured yet same has not been repeated nor any of offensive weapon has been shown to have recovered from his possession. He further submits that prior to this incident, one Abdul Hameed maternal uncle of the applicant (Marot), had also got registered FIR No.61/2023 with Police Station B-Section Thull on 26.07.2023 under sections 452, 324, 337-A(ii), 504, 506/2, 337-H(ii), 148, 149, PPC (page-39), in which present complainant is nominated as an accused duly armed with Iron Rod, has been granted bail. He further submits that the applicant is student of 4th year MBBS and his annual examinations have been scheduled to be conducted on 28.12.2023 and onward. In support of his arguments he placed on record time table issued by Controller of Examinations, SMBB Medical University Larkana dated.23.10.2023, under the cover of his statement dated.01.12.2023, hence submits that injured herself appeared before police before lodgment of incident; however, she had not nominated any of the accused in her entry in the daily diary kept at Police Station on 03.6.2023. In support of his contention, he placed his reliance upon the case of Nooruddin and another v. The State (2005 MLD 1267). He further placed his reliance upon the cases of Khalil Ahmed Soomro and others v. The State (PLD 2017 Supreme Court 730), Gul Nawab v. The State (2022 SCMR 547) & Muhammad Aslam v. State (2014 SCMR 1349), therefore submits that the applicant being young one and the student of MBBS, if may not be granted bail then his entire academic career will be spoiled hence prays for his release on bail.

5. Learned Addl. P. G opposes the bail application on the ground that the applicant has been nominated in the FIR with specific role of causing injury to the injured; besides the offence with which he is charged carries 10 (ten) years punishment hence he is not entitled for the bail. He; however, admits that no offensive weapon has been recovered from his possession nor he had produced it during investigation.

6. Learned counsel the complainant vehemently opposed the bail application on the ground that the applicant has caused injury

aims to commit Qatl-i-Amd of injured PW, hence he is not entitled for bail as according to him, the injury sustained by injured was hit to her on right side of flank (abdomen) and is through and through. However, per opinion of the Medico Legal Officer, it has been declared to be punishable under section 337-F(iii), PPC. In the circumstances, the applicant in any manner is not entitled for bail.

7. I have heard learned counsel for the applicant, learned Addl. P.G. and the counsel for the complainant and have gone through the available material with their able assistance.

8. Admittedly the FIR is delayed for about seven days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay and the delay in criminal cases has always been held to be fatal for the prosecution case. No doubt the applicant has been nominated in the FIR with specific role of causing fire arm injury but he did not repeat the same which may show that he had an intention to cause Qatl-i-Amd of injured PW. The motive as shown by the complainant in the FIR is that daughter of cousin of complainant Shahdad Ali, namely, Mst. Nusrat was abducted away by Abdul Sami and others and to such effect FIR bearing Crime No.38/2023 was registered with PS B-Section Thull, under section 365-B, 457, 34, PPC. However, maternal cousin of Abdul Hameed has been arrested in that case who too got registered FIR No.61/2023 at same Police Station against present complainant and others which shows that the parties are already on loggerheads. As is evident the injured herself had appeared at Police Station on very same day before lodgment of FIR and even ten minutes earlier from the time of incident; however, did not name any of the accused including present applicant in the station diary. The applicant as has been disclosed is student of 4th year MBBS and his examinations have been scheduled and in case the bail may be declined to him, his entire academic career will be ruined/spoiled.

9. Moreover, the parties are already entangled with each other over matrimonial dispute and they have got registered criminal cases against each other, therefore, in view of long standing enmity between the parties, the accusation against him is yet to be established by the prosecution through evidence of its witnesses and the trial Court has to determine such an accusation against the accused.

10. It is well-settled principle of law that every accused would be presumed to be blue-eyed boy of law until and unless he may be

found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution, particularly, at the bail stage. In the circumstances and in view of the dicta laid down by learned apex Court in case of Khalil Ahmed Soomro and others (supra), the injury allegedly sustained by the injured carries maximum punishment of three years and has not been opined by the Medico Legal Officer to be fatal for the life of the injured, the case against the applicant is of further enquiry as contemplated under sub-section (2) of Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court.

11. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.

~~Judge~~

M.Y.Panhwar/ **