

**ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Application No.S-375 of 2017.

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
<u>26.09.2017.</u>	<p style="text-align: center;">For hearing.</p> <p style="text-align: center;">M/s. Muhammad Yousif Leghari and Shahid Altaf Leghari, Advocates for the applicant. Syed Meeral Shah Bukhari, Addl: P.G for the State. Mr. Shabeer Hussain Memon, Advocate alongwith complainant.</p> <p style="text-align: center;">===</p> <p><u><b>ABDUL MAALIK GADDI,J-</b></u> Having remained unsuccessful in obtaining his release on bail from the trial Court in crime No.69 of 2017, registered under sections 395,506(2), 452, 147,148,149 and 337-U, PPC of P.S. Jamshoro, the applicant Mehran Ali s/o Sawan is now seeking his release on bail through instant bail application.</p> <p>2. Brief facts of the prosecution case, as unfolded in the F.I.R, are that on 04.04.2017 the complainant Mst. Benazir Rajar got lodged her F.I.R. alleging therein that one Mehran Hingoro used to issue threats of murder to her for about one and half months. On the eventful day, complainant was present at her house, there was knock at the door at 1730 hours to which complainant opened the door meanwhile every accused (1) Mehran, Sarwan, (2) Eeshar Ali (3) Chinto (4) Mst. Imrana and (5) Mst. Farzana entered the house forcibly and among them accused Mehran was having pistol. The accused caused fists and kicks blows to the complainant and accused Mehran gave pistol butt blow on the face and mouth and other parts of the body of the complainant, resultantly her teeth broken, whereafter the accused damaged the house hold articles and looted cash of Rs.500,000/- lying in Almirah. The complainant raised hue and cry which attracted her neighbors, father Fateh Muhammad and sister Sanam and then the accused while extending threats of murder went away.</p> <p>3. Learned counsel for applicant/accused submitted that applicant/accused is innocent and has been falsely implicated by the</p>

complainant in this case; that there is family dispute between the parties as father of complainant asked for marriage of his daughter Mst. Sanam with the co-accused Sarwan, who is brother of the above named applicant/accused, but the father of the accused refused to take the hand of complainant's sister; that as per statement u/s 161, Cr.P.C. of the complainant's father, wherein he disclosed that there was crowd of people outside the door of his house and the applicant/accused was standing at the door and his daughter sustained injuries on her face and further statement did not transpire the name of accused persons except present applicant/accused; that as per alleged F.I.R, the complainant did not specify who broke the Almirah and who took away the amount of Rs.500,000/-; that during investigation out of six accused persons named in the F.I.R, out of them five have been shown in column No.2 of the challan and I.O. submitted the challan under section 452 and 337-U, PPC before the competent Court of law by deleting the other sections without having sufficient proof; that during investigation, I.O. recorded the statements of defence witnesses namely Farmanulalh, Asif Khan and Abdul Rauf, who have stated in their statements that no incident had taken place in the house of complainant, but it was happened in the street, therefore, on the basis of such statements, the I.O. released the co-accused persons under section 169, Cr.P.C; that as per statements u/s 161, Cr.P.C. of father of complainant and her sister, they both stated that accused party were at the door, as such, the section 452, PPC does not attracted in this case, as accused persons have not forcibly entered into the house of complainant. He lastly contended that 161, Cr.P.C. statement of Mst. Sanam was recorded on 9.4.2017, whereas, her 164, Cr.P.C. statement was recorded on 13.9.2017 after delay of about five months, for which no explanation has been furnished, therefore, false implication of the applicant in this case cannot be ruled out, as there are material contradictions in between the statements of Mst. Sanam recorded under section 161 Cr.P.C. as well as 164, Cr.P.C, therefore, it is yet to be determined at the time of trial that which statement is correct, hence it is a case of further inquiry and the accused is behind the bar since his arrest, therefore, according to him, applicant may be released on bail. In support of his contention, learned counsel for applicant has relied upon the cases of BASHIR AHMED v. AMJAD ALI [2000 SCMR 1074], ZAFAR IQBAL v. MUHAMMAD

ANWAR [2009 SCMR 1488], RIAZ JAFAR NATIQ v. MUHAMMAD NADEEM DAR [2011 SCMR 1708], MUHAMMAD ISHFAQ v. STATE [1994 P.Cr.L.J.1461], MUHAMMAD AMIN v. STATE [2007 YLR 1209] and MUHAMMAD TANVEER ASGHAR v. STATE [2010 YLR 439] and prayed for grant of bail.

4. On the other hand, learned Addl: P.G. assisted by learned counsel for the complainant has opposed this bail application on the ground that name of the present applicant/accused is appearing in the F.I.R. with specific role of causing pistol butt blow upon teeth of the complainant Mst. Benazir, resultantly the teeth were seriously damaged and one tooth was removed and blood was oozing; that since the injuries sustained by the complainant are serious in nature; that the F.I.R. was promptly lodged by the complainant with specific allegation against the present applicant/accused; that I.O. after recording statements of defence witnesses namely Farmanullah, Asif Khan and Abdul Rauf, deleted all the sections without any evidence except 452 and 337-U, PPC and I.O. submitted interim challan u/s 344, Cr.P.C, but till today no order in respect of deletion of sections has been passed by the learned concerned Magistrate, hence the sections mentioned in the F.I.R are intact and remain in field until and unless final order is passed; that complainant party also challenged the medical certificate before the Medical Board in respect of its ascertaining the actual injuries sustained by her, for which, medical board was constituted and report is received in support of the version of the complainant. In support of his contention, counsel for the complainant has placed on record copy of the report of Medical Board showing that there was injury in upper and lower lip with abrasions seen inside lip and one teeth missing and this injury was described as Itlaf-e-Tooth-337-U, PPC. In view of the above circumstances, they prayed that applicant/accused is not entitled for bail at this stage. Learned counsel for complainant has not placed any case law in support of his arguments.

5. I have given my anxious thoughts to the contention raised at the bar and have gone through the police papers so made available before me.

6. It appears from the record that F.I.R. has been registered by complainant Mst. Benazir at Police Station, Jamshoro nominating the

accused persons namely Mehran Ali, Sarwan, Eeshar Ali, Chinto, Mst. Imrana and Mst. Farzana with the allegations that these accused on the relevant date entered into her house forcibly, whereas, present applicant/accused Mehran Ali having pistol in his hand and caused fists and kicks blows to the complainant and after maltreatment her, broken her teeth and damaged house hold articles and looted cash of Rs.500,000/-lying in Almirah. It also appears from the record that during investigation, I.O. of the case released all the accused nominated in the F.I.R under section 169, Cr.P.C. except present applicant/accused on the ground that no cogent evidence has been collected against them. Moreover, I.O. of the case while submitting the challan, deleted the other sections as mentioned in the F.I.R. except sections 452 and 337-U, PPC.

7. It is stated by learned Addl. P.G assisted by learned counsel for complainant that I.O. of the case has not investigated the matter on merit and while submitting challan before the trial Court, deleted the main section and also released the co-accused on the basis of defence witnesses. Since investigation has been completed and challan has already been submitted before the trial Court, therefore, it is yet to be determined at the time of trial whether the present applicant/accused in collusion with other co-accused entered into the house of the complainant, damaged the property and looted cash amount or otherwise.

8. It appears from the record that statement of eyewitness Fateh Muhammad who is father of the complainant was recorded under section 161, Cr.P.C on 9.4.2017, wherein he has stated that there was crowd of people outside the door of the complainant and present applicant/accused was standing at the door and complainant sustained injuries on her face, whereas, according to statement of another eye-witness Mst. Sanam u/s 164, Cr.P.C, she has stated the something differently by improving her earlier statement under section 161, Cr.P.C, which was recorded after delay of about five months, therefore, on this ground false implication of the present applicant/accused cannot be ruled out and it is yet to be determined at the time of trial whether the offence has been committed by the applicant/accused in a fashion as alleged in the F.I.R. or otherwise.

9. During course of arguments, learned counsel for the applicant has read out the statement u/s161, Cr.P.C. of PW Fateh Muhammad, who is father of complainant and said to be eye witness of the incident stated therein that he came out from the house and saw crowd of the people at the door of the complainant and present applicant/accused was standing at the door and her daughter received injuries. It is very strange to mention here that in the said statement, there is no mention with regard to the names of other accused nominated in the F.I.R. or their role. This aspect of the case also requires evidence whether the story as narrated in the F.I.R. as well as 161, Cr.P.C. statement of father of the complainant or version of PW Sanam under section 164, Cr.P.C. is correct or otherwise. Learned Addl: P.G. pointed out that nothing has been recovered from the possession of the present applicant/accused during investigation, therefore, he has conceded this fact during course of the arguments.

10. It is argued by learned Addl: P.G. assisted by learned counsel for the complainant that the offence as alleged is heinous in nature, as the applicant/accused alongwith other co-accused entered into the house of the complainant and caused injuries to complainant at her mouth thereby one teeth was broken and according to them, ocular version of the complainant is found supported by the medical board constituted in this case to determine the injuries sustained by the complainant. As per medical certificate, the injuries sustained on the person of complainant has been described as 337-U, PPC Itlaf-e-Tooth, for which the punishment is provided as Arsh for causing Itlaf-e-tooth, other than a milk tooth shall be one-twentieth of the diyat. This medical certificate has been vehemently challenged by learned counsel for the applicant by stating that this medical certificate is managed one and is belied by ocular version of the complainant.

11. Reverting to the contention raised by complainant with regard to the heinous offence, it is suffice to say that mere heinousness is no ground to refuse bail, if otherwise the accused become entitled to concession of bail and benefit of doubt should be given to the accused even at bail stage, as the conviction and incarceration of a guilty person could be repaired by the wrong caused by mistaken relief of bail, but no satisfactory reprisal could be

offered to an innocent person for his unjustified incarceration at any stage of case if he was acquitted in the long run.

12. In the present case, complainant had allegedly sustained injuries on her lips and one teeth was broken, which fell under the kind of “Itlaf-e-Tooth” under section 337-U, PPC entailing punishment of payment of Arsh and imprisonment which may extend to one year as Tazir. In this regard, counsel for the applicant pointed out that accused is neither a previous convict nor a habitual, hardened, desperate or dangerous criminal and he is no more required for further investigation. Under these circumstances, the applicant has made out a case for grant of bail. In this connection, I am supported with the cases of ALI MUHAMMAD v. STATE [PLD 2009 Lahore 312], AURANGZEB v. STATE [1999 P.Cr.L.J. 230] and IKRAMULLAH v. SAMI ULLAH [1998 MLD 1184].

13. As observed above that the applicant has made out a case for further inquiry within the ambit of sub-section (2) of Section 497, Cr.P.C, therefore, this bail application is allowed. Resultantly, the applicant is admitted to bail after his furnishing solvent surety in the sum of Rs.300,000/-(Rupees three lacs) and PR bond in the like amount, to the satisfaction of Additional Registrar of this Court.

14. Before parting with this order, it is made clear that the observation made herein above, if any, in this order is tentative in nature and shall not affect the merits of the case.

JUDGE.