

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.562 of 2019  
Criminal Bail Application No.772 of 2019

**Present:**

***Mr. Justice Amjad Ali Sahito***

Applicant in Crl. Bail : Mushtaque Ahmed S/o Abdul Haq  
Application No.562/2019 through Mr.Abdul Haleem Jamali,  
Advocate

Applicant in Crl. Bail : Muhammad Fazal S/o Asghar Ali  
Application No.772/2019 through Mr.Abdul Haleem Jamali,  
Advocate

Complainant : Abdul Rehman S/o Bangal Khan  
through Mr. Muhammad Asghar  
Tareen, Advocate

Respondent : The State  
through Ms. Rahat Ahsan,  
Addl. Prosecutor General Sindh.

Date of Hearing : 09.07.2019

Date of Order : 09.07.2019

### **ORDER**

**AMJAD ALI SAHITO, J :-** By this common order, I intend to dispose of both the bail applications emanating from FIR No.204/2019 U/s 147/148/149/448/511/452/324/337-F/337-A(i) PPC registered at PS SSHIA Malir, Karachi.

2. Brief facts of the prosecution case as per FIR lodged on 05.04.2019 at 1830 hours by complainant Abdul Rehman S/o Bangal Khanat PS Site Super Highway Industrial Area stating therein that he is doing his own business of Bismillah Hotel at Gulshan-e-Jamali, Karachi. Since last two months back, he had purchased two plots admeasuring 120 sq. yards each from one Waheed Chandio and after purchased he raised the filling on the said plots and raised house over the said plot and started residing there with his family.

On 04.04.2019 at 2230 hours his brother Bahram Khan and relatives Abdul Ghaffar with his family were present in house when all of the sudden door of house was knocked and stones were pelted over his house and he saw four persons in the light of electricity and he identified them to be Mushtaq, Azhar Ali Korai, Abdul Ghaffar and Muhammad Fazal, they were having the pistols in their hands and with the intention of killing they started firing upon complainant party while 8/10 unknown companions thrown the stones over his house and they entered into house and started beaten and injured them with firing and stones and they also tried to occupy over house, in the meanwhile Bahram Khan informed to 15 police helpline while he can identify the unknown accused, thereafter police mobile came on spot and after this incident he brought the injured persons to Abbasi Shaheed Hospital then after he came to PS and lodged the FIR against the accused persons, hence this pre-arrest bail was filed.

Precisely, the relevant facts leading to disposal of the instant bail application are that with reference of Crime No. 147/2016 U/s 353/324/186/34 PPC arrested accused person namely Shahbaz @ Shani s/o Muhammad Ali and during his arrest, one TT Pistol 30 bore load magazine recovered from his possession and accused person failed to produce the license and this offence comes U/s 23(i)A Sindh Arms Act, 2013.

3. It is *inter alia* contended by the learned counsel for the applicant that the applicants are innocent and have falsely been implicated in this case; that the incident took place on 04.04.2019 but the applicants/accused purchased the said house on 08.04.2019 after four days of the incident, whereas claim of the complainant party was that they are the owner of the said house in which the

incident took place; that in light of the statement recorded by police officials in which complainant party has not disclosed the names of the applicants to believe that the applicants were present at the time of incident; that on the said house, a Civil Suit being No.45/2019 is pending before the 1<sup>st</sup> Civil Judge, Malir Karachi; that the complainant has malafidely with ulterior motives has involved the entire family member of the applicants in this case in order to occupy the house of the applicants/accused. He lastly prayed for confirmation of pre-arrest bail application of accused Mushtaque Ahmed on same terms and conditions and requests for grant of post-arrest bail of applicant Muhammad Fazal.

4. On the other hand, learned counsel for the complainant opposed for the grant of bail to the applicants/accused on the ground that the applicants/accused are nominated in the FIR with specific role; that they have caused the injury to the injured persons; that no malafides on the part of the complainant has been pointed out by the applicants/accused; that all the PWs have supported the version of the complainant recorded U/s 161 Cr.P.C. Lastly, he prayed for dismissal of both the bail applications. In support of his contentions, he has relied upon the cases (1) PLD 2009 Supreme Court PAGE 427 [Rana Muhammad Arshad Vs. Muhammad Rafique] (2) 1996 SCMR PAGE 1270 [Arshad Vs. The State & Another] (3) 2004 PCRLJ PAGE 962 [Liaqat Ali Vs. The State] (4) 1999 PCRLJ PAGE 973 [Jamaluddin Vs. The State & Another] (5) 2007 PCRLJ PAGE 217 [Muhammad Ali Khan @ Mamdal Vs. The State and 2 others] and (6) 2010 YLR PAGE 2155 [Khayal Nawaz Vs. The State].

5. Learned Addl. PG for the State submits that the names of the applicants/accused transpired in the FIR, hence they are not entitled to the concession of bail.

6. I have heard the learned counsel for the parties and have gone through the material available on record. It is an admitted position that the names of the applicants/accused transpired in the FIR but no specific role or injury has been attributed to the applicants/accused, therefore, in such circumstances their vicarious liability as to whether they shared common intention or not can only be decided at stage of trial after recording the evidence. The allegations against applicants/accused are general in nature, the injuries declared by the Medicolegal Officer to injured Abdul Ghaffar as "Jurh Ghayr-Jaifah mutalahima" 337-F(iii) PPC, whereas injury declared to injured Behram Khan and Abdul Rehman declared as "Shujjah-i-Khaffifah" 337-A(i) PPC & 337-F(i) PPC do not come under the prohibitory clause of 497 Cr.P.C., the maximum punishment provided by law for Section 337-F(iii) PPC may extend to three years as Tazir and remaining two injuries are bailable in nature. It has been held by the Hon'ble Supreme Court of Pakistan that where the offence falls within the non-prohibitory clause of Section 497 Cr.P.C. considered favorably by granting bail as a rule but decline to do so in exceptional cases. As far as exceptional circumstances are concerned, those are to be taken into consideration depending upon each case. Further, the applicants/accused pleaded malafide on the part of the complainant that they have involved their entire male family members in this case with ulterior motives. Therefore, keeping in view the facts and circumstances of the case, prima facie, the case against the applicants/accused require further enquiry as

contemplated in subsection (2) of Section 497 Cr.P.C. The case law relied by learned counsel for the complainant is distinguishable from the facts and circumstances of the present case.

7. In view of above, the applicants/accused have made out their case for further enquiry, therefore, interim pre-arrest bail already granted to the applicant/accused namely Mushtaque Ahmed vide order dated 24.04.2019 in Crl. Bail Application No.562/2019 is hereby confirmed on same terms and conditions and the instant pre-arrest bail application stands disposed of accordingly.

8. Considering the above circumstances, applicant/accused namely Muhammad Fazal in Crl. Bail Application No.772/2019 is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

9. The observations made hereinabove are tentative in nature and the learned trial Court shall decide the case specifically on merits.

**J U D G E**

Kamran/PA