

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 64 of 2018

Date	Order with Signature of the Judge
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1. For orders on office objection at "A".
2. For hearing of Bail Application.

For Applicant : Mr. Shehzad Mehmood

For complainant : Mr. Shoukat Ali Bhambhro, Advocate.

For State : Dewan Bhuromal, D.D.P.P

Heard on : 11.05.2018

Decided on : 28.05.2018

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 04/2018, by the trial Court, vide order dated 06.01.2018, the applicant Muhammad Shahid S/o Shafi Muhammad has approached this Court, by filing instant bail application under Section 498 Cr.P.C, for pre-arrest bail in case FIR No. 222/2017, under Section 452, 324, 34 PPC, registered at P.S. Ibrahim Hyderi, Karachi.

2. Story of the prosecution in nutshell is that complainant Mst. Naseem Bibi recorded her statement under Section 154 Cr.PC at Jinnah Hospital, Karachi to ASI Malik Mohammad Aslam of PS Ibrahim Hyderi on 12.11.2017, at 0015 hours, which was incorporated into FIR, stating therein that she resides with her mother at the given address, today, she and her mother widow of Haider Ali were available in the house, at about 7.30 pm, the door of the house was opened, three persons barged into their house. The said perpetrators were the same persons who already involved in criminal litigation with the complainant in court of law. They warned them to vacate the premises otherwise, they would kill them, meanwhile, Nawaz son of Jahania pointed the gun at her so she ran to inside the room in order to save her life. The other perpetrator, Nawaz was previously supporting to them in said property dispute. He and his fellowman Shahid Malik attempted to shoot fires on them and in the process of which they shot her mother straight in the stomach, which caused her great blood loss, therefore, she is undergoing surgery in Jinnah Hospital. She have witnessed three persons while committing this crime so she can identify them by their faces and their names. She wants to take legal action against the said individuals namely, Nawaz son of Jahania, Shahid Malik and Nawaz

S/o not known, by lodging FIR against them for their act of attempting to kill them with the use of firearms.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and law abiding citizen. The complainant with malafide intention and ulterior motives and in order to pressurizing the accused over his claim of the property i.e. E-757, Bhattai Colony, for which Suit No. 611/2017 is pending before the II-Senior Civil Judge, Karachi Malir. He further argued that the complainant Naseem Bibi previously initiated proceedings against the applicant/accused & others by filing Illegal Dispossession Complaint before the III-Additional Sessions Judge, Malir, which was dismissed on 30.05.2011 on merits. Learned counsel for the applicant/accused has further argued that place of incident is situated on main road but the complainant/prosecution has failed to associate any witness in her support which creates serious doubts and it is also utter violation of section 103 Cr.PC. Learned counsel has pointed out that statements of complainant and her mother U/s. 161 Cr.PC are contradictory recorded by the I.O as according to complainant accused Nawaz son of Jahania opened straight fire upon the complainant and she rescued herself and escaped to another room, whereas alleged injured lady in her statement u/s 161 Cr.PC stated before the I.O ((Investigation Officer) that accused Nawaz S/o Imam Bux opened straight fire upon her daughter i.e. complainant, with intention to kill her. According to learned counsel for the applicant/accused neighbor and closed residents have refused to hear any sound of fire shot from the complainant's house as well as they denied to see any person while entering her premises. That there is a delay of about 20 hours in lodging the FIR which creates serious doubts into the offence and bring it within the ambit of further inquiry. Learned counsel for applicant also contended that no specific role has been assigned to the applicant/accused in the FIR which clearly makes his case, a case of further inquiry. Learned counsel in support of his arguments has relied upon the cases reported in 2018 YLR 467 and 2018 MLD 127.

4. Learned D.D.P.P has strongly opposed the bail application on the ground that the complainant has disclosed the specific role of the applicant/accused in her FIR by stating that the applicant/accused has attempted to commit their murder. The

complainant's mother has received bullet injury on her abdomen and in this regard MLC of her mother is on record which shows that the mother of the complainant was unconscious when she brought at JPMC. Injured (mother of complainant) and complainant were present in court and the injured showed her injury before the Court, therefore, the applicant/accused is not entitled for concession of bail.

5. After hearing argument from both the sides and perusal of available record it appears that though accused is nominated in FIR, yet no specific rule leading to firearm injury is attributed to applicant/accused Shahid Malik. Charge sheet/challan of the case submitted by the police upon completion of investigation also do not associate the applicant/accused with any specific act prompting towards the crime. It is also evident that there is property dispute between complainant and accused persons in present case. It was brought on record that accused Shahid Malik is the person who bought the property in question from co-accused Nawaz Jehania who is the main accused in the case. It is also revealed that civil litigation is pending between the parties regarding property in question i.e. Plot No.E-757, Bhattai Colony, Karachi, which was allegedly sold by one Manzoor Alam Lakho husband of injured woman in the year 2001 through registered sale deed though he was died in the year 2000 and his CNIC issued in the year 2017.

6. In view of the foregoing discussion, it is obvious that matter is of further inquiry and the applicant/accused Shahid Malik is entitled for conformation of pre-arrest bail granted earlier vide order dated 16.01.2018.

J U D G E