

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Cr. Bail Application No.S-1265 of 2019**

Mr. Farhad Ali Abro, Advocate for Applicants.  
Mr. Shawak Rathore, Deputy Prosecutor General.  
Syed Shahzad Ahmed Shah, Advocate for Complainant.

**Date of hearing:** 10.02.2020  
**Date of order:** 10.02.2020

**O R D E R**

**Khadim Hussain Tunio, J.-** Through the instant criminal bail application, applicants Nasir Shahzad S/o Qazi Rehmatullah and Shakir Shahzad alias Shakir Ali S/o Qazi Rehmatullah seek their admission on pre-arrest bail in case bearing Crime No.233 of 2019 registered at P.S Market, for offences under Sections 324, 114, 504, 337-A(i), 337-F(i), 34 PPC.

2. The facts in brief as narrated in the F.I.R. are that on 25.10.2019 at about 0920 hours, the applicants / accused alongwith rest with their common intention attacked upon the complainant party and caused firearm injuries to complainant's paternal uncle Sikandar Ali with intention to commit his murder, for which subject F.I.R was lodged.

3. Learned Counsel for the applicants has vehemently contended that applicants are innocent and they have falsely been implicated in this case as there is no reasonable ground to believe upon that they have committed the alleged offence; that the F.I.R has been lodged with unexplained delay of one day; that place of the alleged incident is thickly populated area but nobody has been cited as independent person to witness the incident; that this is the case of ineffective firing as none has received any bullet injury; however, the story of firearm injuries to the injured has been managed by the

complainant with *mala fide* intention; hence, it requires further inquiry. Learned Counsel has further contended that no medical evidence is available on record; that in F.I.R the police itself has inserted Section 337-A(i) and 337-F(i) PPC without opinion of the Doctor, which clearly shows *mala fide* on part of the complainant; that bail should not be refused as a punishment and that putting of the applicants in jail could not be cured if they are found innocent as the role assigned to the applicants is quite untrustworthy and shaky, which requires detailed probe; therefore, he requests that instant bail application may be allowed and interim pre-arrest bail already granted to the applicants may be confirmed on same terms and conditions. In support of his arguments, learned Counsel has relied upon the cases of HAMZA ALI HAMZA and others v. THE STATE (2010 SCMR 1219), ABDUL HAMEED v. ZAHID HUSSAIN alias PAPU CHAMAN PATIWALA and others (2011 SCMR 606), MUHAMMAD SHAHZAD SIDDIQUE v. THE STATE and another (PLD 2009 Supreme Court 58), DILDAR BAIG v. THE STATE (1998 SCMR 358), KHALIL AHMED SOOMRO and 3 others v. THE STATE (2019 P.Cr.LJ Note 109) and MIR HASSAN v. THE STATE (2012 MLD 377).

4. Conversely, learned D.P.G as well as learned Counsel for the complainant advanced their arguments in the same voice by submitting that specific role has been attributed to the applicants for causing firearm injuries to injured Sikandar Ali with intention to commit his Qatal; that applicants are guilty of the offence and they are not entitled for any concession. The Complainant's Counsel in support of his arguments has relied upon the cases of RIAZ AHMAD v. THE STATE (2009 SCMR 725), MUKHTAR AHMAD v. THE STATE and others (2016 SCMR 2064) and ZUBAIR ALI SHAH and another v. THE STATE (SBLR 2019 Sindh 2353).

5. I have given due consideration to the arguments advanced by the learned Counsel for the respective parties and perused the material available on the record.

6. From the perusal of F.I.R, Medical Certificate and statements of the witnesses, I do not find any substance in the arguments advanced by the learned Counsel for the applicants as the medical report does not corroborate the ocular account. The enmity is admitted by the parties, it is pertinent to mention here that the enmity is a double-edged sword which cuts both sides. Where it prompts one to falsely implicate someone in a crime, it also prompts an individual to commit such a heinous crime as alleged in the present case. The presence of the applicants has been proved by the prosecution as well as injured witness, the facts portrayed in the F.I.R have been corroborated by the medical examination and the allegations against both the applicants are very specific and serious for causing firearm injuries to injured Sikandar Ali. At this juncture, it is prudent to say that the applicants as well as their Counsel have not been able to satisfy this Court with cogent and reliable reasons as to lodge a false FIR besides enmity. The offence with which the applicants are charged falls within the prohibitory clause of Section 497 Cr.P.C, which alone is sufficient for refusal of bail to the applicants. In this respect, reliance is placed upon the case of MUHAMMAD WAQAS v. THE STATE (2002 SCMR 1370), wherein the Hon'ble Apex Court has observed as under:-

*"2. Bail was refused mainly on the ground that on facts and circumstances of the case provisions of section 324, P.P.C. were prima facie, attracted and as such the bail plea was hit by the prohibition contained in section 497, Cr.P.C.*

*3. In view of the facts stated in the F.I.R. the learned Judge in Chambers of the High Court has exercised his discretion correctly and we see no compelling reason to interfere with the same.*

*4. Resultantly, the petition is dismissed and leave declined."*

7. It is also well settled law that bail in non-bailable offences has always been considered by the Courts where case for bail is made out. While considering the bail matter of an accused person involved in a non-bailable offence, if there appear reasonable

grounds for believing that he is guilty of an offence punishable with death or imprisonment for life, he shall not be released on bail, until and unless the case is covered by any of the provisions in Subsection (1) of Section 497 Cr.P.C. Bail in cases of commission of non-bailable offences and particularly falling within the Prohibitory Clause of section 497 Cr.P.C is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry, without keeping in view the entire provisions of Section 497 Cr.P.C. If bail is to be granted to every accused, even if charged with a non-bailable offence, without considering the merits of the case, merely on the plea that every accused is presumed to be innocent unless proved otherwise, the very concept and purpose of drawing a line between bailable and non-bailable offences and various kinds of punishments, as prescribed by the law, shall stand frustrated. The discretion vested in the Court, is to be exercised in a judicial fashion, in the light of the facts of each case. Where the prosecution collects enough material to constitute reasonable grounds connecting the accused with the alleged offence, then the Courts are always slow to accede to the request for bail. The offence with which the applicants are charged *prima facie* falls within the prohibitory clause of Section 497 Cr.P.C, which is sufficient to refuse their pre-arrest bail as the applicants have failed to satisfy the Court regarding any *mala fide* on part of the complainant or police, which is prerequisite condition for grant of extraordinary relief. In this respect, I am also fortified by the cases of MUKHTAR AHMAD v. The STATE and others (2016 SCMR 2064), MUHAMMAD SADIQ v. The STATE and another (2015 SCMR 1394) and MUHAMMAD ARSHAD and another v. THE STATE and another (1996 SCMR 74). As far as, the case law referred to by the learned Counsel for the applicants is concerned, the same are not applicable with the present case and are based upon distinguishable facts and circumstances.

8. In view of whatever discussed above, I am of the considered view that the applicants have failed to make out their case for pre-arrest bail. Accordingly, interim pre-arrest bail already granted

to the applicants by order dated 15.11.2019 is hereby recalled and consequently instant bail application is dismissed. Applicants are directed to surrender before learned trial Court. The learned trial Court is also directed to proceed with the case expeditiously and decide the same within a period of 02(two) months under intimation to this Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and shall not in any way prejudice the case of either party at trial.

Bail Application stands disposed of in the above terms.

**JUDGE**

Shahid