

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 467 of 2020

Hamza
vs.
The State

For the Applicant / Accused : Syed Shahid Mushtaq
Advocate

For the Prosecution / State : Mr. Abrar Ali Khitchi
Additional Prosecutor General

For the Complainant : Mr. Muhammad Iqbal
present in person.

Date of hearing : 16.04.2020

Date of announcement : 16.04.2020

ORDER

Agha Faisal, J. Through this criminal bail application the applicant seeks post-arrest bail, in respect of Crime / F.I.R. 33 of 2020 registered before P.S. P.I.B. colony, Karachi East, in respect of offences under sections 337-A(ii), 337-A(iii) and 34 P.P.C.

2. Learned counsel submits that the earlier pleas for bail by the applicant were rejected by the Court of XXth Judicial Magistrate, Karachi East, in Bail Application 03 of 2020 and the Court of the Additional Sessions Judge-III, Karachi East in Bail Application 1133 of 2019 (*the year mentioned in the title of the order appears to be a typographical error and is herein read as 2020*) respectively, hence, the present proceedings.

3. After considering the arguments of the learned counsel and perusal of the record available before the Court, reproduction whereof is eschewed herein¹, it is observed as follows:

- a. The allegation levelled against the applicant, in the aforementioned F.I.R., dated 29.01.2020, was that on 25.02.2020 the complainant and his relative were present at the complainant's burger shop, whereat upon an altercation they were attacked by the accused and cohorts, causing injuries.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that the allegations were false; contradicted by the statements and medical reports of the complainant / witnesses; there was unexplained delay in lodging of the F.I.R., which in itself did not nominate the applicant or assign any specific role thereto; and that the complainant was unscathed, as manifest from his presence before the court.

¹ *Muhammad Shakeel vs. The State & Others* reported as *PLD 2014 Supreme Court 458*.

The Prosecution read out the Section 161 Cr.P.C. statements of the complainant and two witnesses, in order to assist the court, and submitted that notwithstanding the same the accused was not entitled to bail on account of being charged with a non-bailable offence. The Complainant, present in court, did not make any submission to supplement the contentions of the Prosecution.

- c. It is noted that the F.I.R., and the complainant's statement, reports that the complainant was hit with a bottle. The statement of witness Zahid does not contain the said assertion and on the contrary refers merely to a heated verbal exchange. The statement of the witness Khalid states that both, the complainant and the witness Zahid, were hit with a bottle. It is demonstrated that the statements are *prima facie* dissonant *inter se*.
- d. The primary medical reports of witness Zahid and the complainant, dated 25.01.2020, were perused and the element of any fracture was found absent therefrom.

It was observed from a supplementary medico legal report, also dated 25.01.2020, that the author has ascribed sections of penal law under which his observations with respect to injuries purportedly fall, despite the same being outside the purview of his domain and jurisdiction².

- e. Upon tentative assessment of the material collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence, merits further enquiry, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C.
- f. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception³. It is also observed that the present case does not fall within the ambit of exceptions provided in the case of *Tariq Bashir case*⁴.

4. In view of the foregoing it is the considered view of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, therefore, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

² Per *Dost Muhammad Khan J. in Khalil Ahmed Soomro & Others vs. The State* reported as *PLD 2017 Supreme Court 730*.

³ *Muhammad Shafi vs. The State* reported as *2016 SCMR 1593*.

⁴ *Tariq Bashir & Others vs. The State* reported as *PLD 1995 Supreme Court 34*.