

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Cr. Bail Application No. 510 of 2020**

Applicant : Muhammad Abdullah son of Muhammad Ashraf,  
Through Mr. Muhammad Jameel, Advocate.

Respondent : The State, through Ms. Rubina Qadir,  
Deputy Additional P.G, Sindh.  
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Date of hearing: 21.04.2020.

Date of order: 21.04.2020.

**ORDER**

**ABDUL MOBEEN LAKHO J:-** Through instant criminal bail application applicant/accused Muhammad Abdullah son of Muhammad Ashraf seeks post-arrest bail in Crime No. 10 of 2020, registered at P.S Boat Basin, Karachi under Section 337-A(i), 337-F(iv) PPC vide order dated 24.02.2020 passed by the learned IInd Additional Sessions Judge, Karachi South.

2. Briefly stated, the facts of the case as per FIR are that complainant Muhammad Ajmal came at police station along with his daughter Sobia, stated that his daughter has married with his nephew Abdullah son of Ashraf (present applicant), she resides with her in-laws near Noor Masjid Street No.1, Bath Island. On 03.12.2019, his daughter Sobia sustained injuries on her chest and on her face, due to beating of her husband Abdullah and her mother-in-law Aziz Mai, thereafter, they took his daughter to Jinnah Hospital then to Hashwani Hospital for her treatment. On 05.12.2019, when complainant came to know he rushed to Hospital, where he found his daughter in serious injured condition, hence, such FIR of the incident registered at police station against the accused persons. Hence, the present bail application.

3. Learned counsel for the applicant/accused contends that the applicant/accused is a labor by profession is innocent and has falsely been implicated in this case by the complainant over matrimonial issues arises between the applicant and his wife; that this is purely dispute which malafidely converted by the complainant at the instigation of his relative Irshad into criminal proceeding; that injured Mst. Sobia has not made a complainant, because she is the wife of applicant and willing to save matrimonial life and intended to reside with the applicant/accused; that no specific role of maltreatment has been assigned to the applicant/accused, as per FIR and challan

the applicant/accused punched on the face of his wife, which allegations are general in nature, hence section 337-F(iv) PPC not attributed to the applicant/accused, it is yet to be determined regarding the role of each and every accused in this crime, hence, the case against the above applicant/accused calls for further enquiry; that the mother of the applicant/accused involved in the crime but same was enlarged on bail before arrest treating her case on merits, hence, present applicant/accused is entitled for grant of bail as rule of consistency; that there is also sheer violation of mandatory provision of Section 173 Cr.P.C FIR lodged on 08.01.2020; there is inordinate delay of 26 days in lodgment of the FIR without any explanation; that it is a case of no evidence at all, neither complainant nor his witness Irshad are eye witnesses of the incident; that actual fact is that on 07.12.2019 applicant along with his wife injured Sobia was coming back to his house from the house of complainant and during his way his bike was slipped and both the applicant and his wife fallen down at that time she sustained some scratches on her face; that co-accused Aziza Mai granted bail her pre-arrest bail and confirmed by the learned IInd Additional Sessions Judge, Karachi South, hence, rule of consistency applies; that section 337-A(i) PPC is bailable offence while section 337-F(iv) PPC in carrying five years punishment, hence comes out from the prohibition contained in section 497(1) Cr.P.C, in such type of cases grant of bail is a rule while its rejection is an exception, hence the case requires further inquiry and there is no chance of his absconding from the prosecution evidence as well as applicant/accused is ready to furnish solvent surety for the entire satisfaction of this Hon'ble Court.

4. Learned D.P.G for the State opposed for grant of bail to the present applicant/accused on the ground that applicant/ accused is involved in an offence which is torturing to his wife/victim.

5. I have heard the learned counsel for the parties and for the parties and have gone through the record of this case with their able assistance.

6. It has been noticed by this Court that in the FIR it has been recorded that the occurrence took place on 03.12.2019 and the FIR was lodged on 08.01.2020 with the delay of more than one month. However, the injured/victim of the case, namely Sobia wife of accused Muhammad Abdullah, was examined by the Medical Officer on 08.01.2020, after a delay of one month. There is no reasonable explanation as to why this delay occurred in the examination of the injured/victim of the case. A tentative perusal of the record shows that, prima facie, no sufficient material is available on the record to believe that the accused has committed the offence, as the co-accused namely Mst. Aziz Mai w/o. Muhammad Ashraf, who was also attributed role of beating the injured/ victim of the case, is on bail. In the instant case, the intention of

the accused to kill the complainant is not available. The case of the accused seems to be covered by the provisions of section 337-F(vi) of the P.P.C. which does not fall within the prohibitory clause of section 497 of the Cr.P.C. Furthermore

7. In the given circumstances, the case of accused falls within the ambit of cases where grant of bail is a rule. Reliance is placed on the case of Jan Muhammad v. Haji Noor Jamal (1998 SCMR 500) wherein it has been held as under:

"In light of the provisions contained in section 324, P.P.C. read with section 337, P.P.C., we agree with the submissions made by the learned counsel for the petitioner. We agree with him that present case is not covered by the prohibition contained in subsection (1) of section 497, Cr.P.C"

8. Besides, no exceptional circumstances appear in this case to withhold bail to the accused. The accused is behind the bars since his arrest and the investigation has been finalized, and the allegations against him are yet to be proved through evidence in the court, as such, further detention of the accused in this case at this stage would not serve any fruitful purpose. Admittedly, the accused is a previous non-convict. The trial has not seen any fruitful progress as yet. It is settled that while dealing with the question of bail, court should consider the minimum aspect of the sentence provided for the alleged offence in the schedule. The accused is the husband of the victim and after all this ruckus they are still living together. In this respect, I am supported with the case of "Tariq Bashir and 5 others v. The State" reported as PLD 1995 SC 34, wherein it has been mentioned that section 497, Cr.P.C. divided non-bailable offences into two categories (1) offences punishable with death, imprisonment of life or imprisonment for ten years (2) offences punishable for imprisonment of less than ten years, the principle to be deduced from this provision of law is that non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example:--

- (a) Whether there is likelihood of abscondence of the accused;
- (b) Where there is apprehension of the accused tampering with the prosecution evidence;
- (c) Where that is danger of the offence being repeated if the accused is released on bail; and
- (d) Where the accused is a previous convict.

9. This principle has also been reiterated in the case of "Zafar Iqbal v. Muhammad Anwar and others" (2009 SCMR 1488), Riaz Jafar Natiq v. Muhammad Nadeem Dar and others (2011 SCMR 1708). Grant of bail is a right and refusal is an exception in such like cases as held by the august Supreme Court or Pakistan in the case of "Imtiaz Ahmad and another v. The State" (PLD 1997 SC Page 545) held as under:

"Even in cases where a person is accused of non bailable offence and the case does not fall within the prohibitory clause, meaning thereby that the punishment prescribed for the offence is neither death nor imprisonment for

life nor 10 years, the grant of bail in such cases is a rule and refusal an exception."

10. The prosecution has not produced any material to prove extraordinary and exceptional circumstances to refuse bail to the petitioner.

11. For the foregoing reasons the instant bail application in hand is accepted and the applicant/accused is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.50,000/- (Rupees fifty thousand only) with one sureties each, in the like amount, to the satisfaction of learned trial court.

12. Needless to mention that any observations made in the above order are tentative in nature and shall not influence the trial court

13. These are the reasons of my short order dated 21.04.2020.

This Criminal Bail Application stands disposed of missed in the same terms.

**JUDGE**