IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail. Application: No. 266 of 2020.

Applicant	Ahmed Nawaz S/o Wali Muhammad through Mr. Jehangir Rahujo, Advocate
The State	through Mr.Faheem Hussain Panhwar, D.P.G.
Date of hearing	15-04-2020
Date of Order	15-04-2020

O R D E R

ABDUL MOBEEN LAKHO---J., Applicant / accused Ahmed Nawaz S/o Wali Muhammad seeks post arrest bail in a case bearing crime No. 65/2020 under Section 324/34, P.S, Sukkan, District Malir, Karachi. The bail plea of the applicant / accused was denied by the learned court of Additional Sessions Judge-V Malir, Karachi vide order dated 12.02.2020.

2.   That according to the prosecution the allegations against the present accused, as narrated in the FIR and statement of complainant under 154 Cr.P.C recorded on 25.01.2020 at about 1830, are that on 11.01.2020 Nazeer Ahmed Lashari S/o Ghulam Hyder Lashari residing at house Kachi Abbadi Lashari Goath, Razzaqabad, District Malir Karachi having Mobile No.0321-2801214, CNIC No.42501-7037451-9, dismissed ASI of Police Department was going to Hakeem for taking medicines on his Motorcycle Honda 125, when he reached at service road beside the Kaizen Pharmaceutical Company at about 1215, he saw three persons on two motorbikes standing on the Road, from amongst them, one on Bike and one by foot, stopped their bike in front of his bike, one who was on feet pointed his 9mm Pistol at him and he tried to apprehend him and thrown him on the ground and the person who was on bike apprehended him from his back side at same time the person who had fallen on ground fired at him with intention to kill him and he became injured due to hit by bullet and those all accused escaped on their motorbikes, in that time of resistance he found one coloured copy of CNIC No.42501-12869029 fallen on the ground by named Muhammad Yaseen S/o Muhammad Yaqoob and coloured copy of papers of one Motorcycle No.KFW-0334 Super power Model 2012 from the ground, he in the injured condition called 15 (a number of police help line), he went to Kissan Hospital on his Motorcycle from there he got first aid, after that he called Police station

Sukhan and then police reached there and shifted him towards Jinnah Hospital on Eidhi Ambulance, hence present FIR.

3.   Learned counsel for the applicant/accused contends that the applicant/accused is innocent and he did not commit any crime, that applicant is not nominated in this case, that no any Identification parade has been conducted to properly identify the unknown accused/applicant; that applicant accused has been falsely implicated in this false and fabricated case; that there is delay of 14 days in lodgment of the FIR; that no any specification or identification marks of real offenders are given in FIR or in statement U/S 154 Cr.PC.; that complainant till the date in prosecution story did not specify or mentioned that who is from the accused persons who fired upon him; that applicant/accused is not arrested from the place as police showed in memo of arrest dated 27.01.2020 but he was arrested two days prior on 25.01.2020 from inside the Platinum Pharmaceutical where applicant/accused is working as a labour; that accused persons were in police remand for 06 days but neither crime article nor crime empty were recovered; that there is no any motive to kill the complainant is shown in prosecution papers; that CRO of applicant/accused is evident that he is not previously involved or convicted in any criminal case; that minimum punishment for section 324 is 05 years and maximum 10 years but it is settled law that minimum punishment will be considered at bail stage, therefore, same does not fall within prohibitory clause of 497 (1) Cr.P.C; that no any witness is taken from the residents of the locality all witnesses are police officials and interested witnesses; that the prosecution story is full of doubts and require further enquiry; that the challan is submitted, investigation is completed, accused has sent to judicial custody and no more required by the police; that the applicant/accused bound himself to present himself before this Hon'ble Court on each and every date of hearing; that the applicant/accused is ready to furnish the surety according to the satisfaction of this Hon'ble Court. Hence prays for grant of bail.

4.   Learned D.P.G, Sindh representing the State flatly opposed for grant of bail to the present applicant/accused on the ground that applicant/ accused is involved in an offence which is heinous in nature.

5.   I have heard the learned counsel for the parties at length and perused the record.

6.   The incident took place on 11.01.2020 at about 1215 hours and the complainant lodged an FIR on 25.01.2020 at about 1830 hours with delay of 14 days, the delay is not explained that too when the police station is very closed to the place of incident. Delay in lodging of FIR provides sufficient time for deliberation and consultation, the delay in such criminal cases is considered to be fatal to the case of the prosecution, which makes the case of the applicant one of further inquiry. The applicant has not been named in the FIR nor any thing incriminating has been recovered from the present accused. It is settled law that every accused is presumed to be blue eyed boy of law until and unless he is found to be guilty of charge after recording of evidence, and law cannot be stretched upon in favour of prosecution particularly at bail stage.

7.   In view of the foregoing, learned counsel for the applicant has made out a case of further enquiry within the meaning of sub-section 2 of section 497. Therefore, applicant/accused is admitted to bail in the sum of Rs.200,000/- and P.R. Bond in the like amount to the satisfaction of Nazir of this Court.

8.   The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the applicant if he will be found misusing the concession of bail.

9.   These are the reasons of my short order dated 15.04.2020.

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

                                                                    JUDGE

Jamil Ahmed / PA