

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-576 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection
For hearing of main case.

24.08.2020.

Mr. Muhammad Nawaz B. Jamali, Advocate for applicant.
Mr. Nazar Muhammad Memon, Addl: P.G.
Mr. Ghulamullah Chang, Advocate for the complainant.

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RASHIDA ASAD, J: Through this application, applicant Muhammad Moosa, seeks post-arrest bail in Crime No.43/2020 registered at P.S S.F. Rahu, District Badin for offences under sections 324, 147, 148, 149, 337-A(i), 337-F(i), 403 and 504, PPC, after having failed to obtain such relief from the trial Court.

2. Brief facts of the case as alleged by complainant are that on 21.04.2020 he with his relatives was present in otaq, existing on government land, as they were preparing dumping place (khara) for sunflower crop. At 1150 hours besides applicant, Juman, Hussain, Mir Murtaza and Khamiso, differently armed murderously assaulted the complainant party. Applicant made straight fire on Shahzaibm, landing on his left thigh, while second fire on Akbar Chang, landing on his right thigh, both fell down, while co-accused caused injuries to other PWs. Such F.I.R. was lodged against the applicant and co-accused.

3. It is, inter alia, contended by learned counsel for the applicant that applicant is innocent and has been falsely implicated in this case by the complainant party on account of previous enmity as they wanted him to vacate the house; there is counter version of the incident and co-accused involved in this case have already been admitted to bail; that the complainant alongwith seven persons assaulted the applicant, Ramzan, Khamiso and their women folk, Mst. Amna, Mst. Khatoon and Mst. Hakiman who received serious injuries and such F.I.R. has been lodged by Muhammad Ramzan against the complainant party bearing Crime No.44 of 2020; that there are counter cases between the parties and at this stage it cannot be said that which party is aggressor and which party is aggressed; that applicant is an old person of 72 years and is behind the bar since two months. Lastly, he prayed for grant of bail to the applicant. He has relied upon the case of SAQIB & others vs. THE STATE (2020 SCMR 677) and case of MUHAMMAD FAISAL v. THE STATE (2020 SCMR 971).

4. On the other hand, learned Additional Prosecutor General Sindh as well as learned Advocate for the complainant have opposed the grant of bail to applicant on the grounds that applicant has actively participated in commission of crime by causing fire shot injuries to PWs Shahzaib and Akbar Chang, therefore, he is not entitled for bail.

5. I have considered submissions of parties and perused the material available on record.

6. It appears from the record that applicant is nominated in the F.I.R. with specific role of straight firing at PW Shahzaib and repeated fire on PW Akbar with intention to kill them. The specific role of causing fire shot injuries to Shahzaib and Akbar Chang with intention to commit their murder is attributed to the applicant. The crime weapon was also secured from the applicant. Therefore, it would be premature to say that the applicant being innocent has been involved in this case due to enmity. If for the sake of arguments, it is believed that there is counter version of the incident and the accused involved from either party, have already been admitted to bail, even then such fact is not enough to admit the applicant to bail in case like present one by making a conclusion that this case is calling for further enquiry.

7. In case of **NASRULLAH KHAN versus Mst. BAS KHANDANA and another** (1997 MLD 2071) it has been held as under:

“4. The bail was mainly sought on the ground that prior to the registration of the present case against the accused party, Saboor Khan had lodged F.I.R. I No.5, a cross-report, wherein he had charged Hayatullah, the deceased of the present case, Haqdad and Munawar Khan for the murder of his son Shah Pur Khan. The counter-version by itself cannot be pressed into service as of right for the grant of bail unless there is a scope of further inquiry in the matter. The plea of bail can only be considered if the case falls within the ambit of section 497(1) & (2), Cr.P.C. and if the conditions laid down in the said section are not fulfilled, then the accused cannot be released on bail. The ground of further inquiry can only be considered if the Officer-Incharge of Police Station or Court taking cognizance of the matter comes to a definite conclusion on consideration of the entire material that there are reasonable grounds for believing that the accused has not committed non-bailable offence, and without such finding by such officer or the Court, the accused would not be released on ground of further inquiry under subsection (2) of section 497, Cr.P.C. as held by Supreme Court of Pakistan in 1985 SCMR 382.”

8. Therefore, prima facie in my opinion, there are reasonable grounds to believe that applicant is involved with the commission of

offence and has failed to make a case for bail at this stage. Accordingly, this bail application was dismissed by my short order dated 24.08.2020 and these are the reasons for the same. The case law cited by learned Advocate for the applicant is not applicable to the facts and circumstances of the present case, as the same are distinguishable from the facts of instant case.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial court while deciding the case of applicant on merits. The learned trial Court is directed to expedite the matter in accordance with law.

JUDGE

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