

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

Criminal Bail Application No.S-129 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
1.	For orders on office objections.
2.	For hearing of main case.

Mr. Abdul Sattar Sarki, Advocate for the applicant.
Mr. Zahid Mallah, Advocate for the complainant.
Mr. Fayaz Hussain, Assistant Prosecutor General, Sindh.

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Date of hearing: 30.08.2021

Date of decision: 03.09.2021

ORDER

KHADIM HUSSAIN TUNIO, J.- This is an application under section 497 Cr.P.C filed on behalf of the applicant praying for his release on bail in case emanating from Crime No. 33/2020, for offence punishable under sections 324, 114, 35 and 504 P.P.C, registered at P.S. Moya District Tando Muhammad Khan. The applicant had earlier approached the learned trial Court with the same plea, but it was declined by the learned 1st Additional Sessions Judge, Tando Muhammad Khan vide his order dated 29.01.2021.

2. It Is alleged that present applicant, after forming an unlawful assembly with the rest of the co-accused and in prosecution of their common object, shot upon one Muhammad Bux with his Repeater while he was coming home and reached link road of village Sohbat Khan Rind in pursuance of their admitted enmity over a piece of land, for which the present F.I.R was registered.

3. Learned counsel for applicant contends that applicant is innocent and has been falsely implicated in the present case on the pretext of enmity; that there is a six hour delay in the lodging of FIR which has not been explained by the prosecution; that the complainant party, a day prior, had attacked upon them and injured alleged co-accused Inayat Ali who received a firearm injury; that to save the skin of their own and settle enmity, the complainant along with SHO of Police Station Moya had also threatened the applicant; that the

applicant was forcibly taken by the police after seeking return of bribe amount the police had taken from them forcefully; that co-accused have already been granted bail by this Court; that the applicant is behind bars since the month of July 2020, however there has been no progress in the trial despite directions of this Court to expedite the same within 3 months, vide order dated 23.10.2019; that the applicant may be released on bail as his case calls for further inquiry.

4. Learned counsel for the complainant contends that the applicant is named in the FIR with the specific role of causing a firearm injury to the injured with his Repeater; that the crime weapon has also been recovered which was sent to the FSL and the report in this regard was received positive; that there is sufficient material available on the record to connect the applicant with the commission of the offence. Learned Assistant Prosecutor General, Sindh argued in the same line as argued by the counsel for complainant.

5. I have heard the learned counsel for the respective parties and have gone through the record.

6. Admittedly, the name of the applicant transpires in the FIR with the role that he, duly armed with a Repeater and for causing firearm injury to PW Muhammad Bux. There is no conflict between medical and ocular account and medical evidence is in the line of ocular evidence and so is the FSL report of the alleged Repeater recovered from the applicant. As far as the six hours delay in the lodging of FIR is concerned, not only has it been explained but it has also been observed by the Hon'ble Apex Court in the case titled *Haji Guloo Khan v. Gul Daraz Khan and others (1995 SCMR 1765)* that no doubt, benefit arising from the delay in lodging the FIR goes to the accused, which could be taken into consideration along with other circumstances, while deciding the bail application, however delay in lodging of FIR alone is never to be considered a circumstance which is sufficient for grant of bail in a case carrying capital punishment. Moreover, it is also a settled principle of law that the court has to make tentative assessment while deciding the bail application and before recording the evidence in the trial court and deep appreciation of evidence is not permissible at bail stage, which may cause prejudice to the case of either party at the trial. In this respect, reliance is placed on the case law reported as *Bilal Khan v. The State through P.G, Punjab and another*

(2020 SCMR 937). The parties are known to each other hence there is no question of mistaken identity. Therefore, taking a tentative assessment of the available record, the applicant being prima facie connected with the commission of offence is disentitled for the concession of bail.

7. Earlier, bail applications of the applicant were already dismissed on merits by this Court vide order dated 23.10.2019. As far as the non-compliance of the directions issued by this Court vide order dated 23.10.2019 to expedite the trial and conclude the same within three months from that day is concerned, non-compliance of directions itself is no ground for grant of bail. In this respect, reliance may respectfully be placed upon the case law reported as *Nisar Ahmed Vs. The State (PLD 2016 SC 11)*. The Division Bench of this Court has also been pleased to observe in **Criminal Bail Application No. D-817 of 2001** *Re: Muhammad Nawaz alias Deno & another Vs. The State* that:-

“It needs to be clarified that indulgence shown by the superior Courts by issuance of such directions for the trial Court to conclude cases within some specified period are only meant / aimed to expedite proceedings of the cases against the accused and not to arm them with so-called new ground for bail in case of non-compliance of such directions, as vehemently argued by Mr. Muhammad Ayaz Soomro. It will be seen that such a concept is totally alien to any statutory provision. Learned counsel, when asked to refer any provision of law in this context also failed to do so. As observed above in the cases referred by learned counsel also the question of grant of bail to an accused was taken into consideration on the principle of hardship, with reference to the nature of the offence and the period for which accused had remained in custody without conclusion of trial and not merely due to non-compliance of earlier directions.”

8. In view of above observations, I am of the considered view that there is sufficient material available on record which connects the applicant with commission of the offence, hence instant bail application being meritless is hereby dismissed. Before parting with this order however, learned trial Court is again directed to expedite with this matter on a day to day basis and be done with the same preferably within three (03) months from the date of receipt of copy of this order. It is also ordered that if any parties apply delaying tactics, the trial Court would be at liberty to appoint counsel on state expenses and expedite with the matter and decide the same fully in accordance with law.

9. Needless to mention here that the observations made here and above are tentative in nature and shall not in any way affect the merits of case of either party at the trial and / or influence the mind trial Court at the time of deciding the case finally.

JUDGE

Ali Haider