

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

Cr. Bail Appl. No. S- 56 of 2022

Ghulam Qadir

Vs.

The State

Syed Faiz Ahmed Shah, Advocate for applicant  
Mr. Ghulam Ali Mughal, Advocate for Complainant  
Ms. Safa Hisbani, A.P.G.

Date of Hearing : 07.03.2022  
Date of Decision : 11.03.2022

**ORDER**

**SHAMSUDDIN ABBASI, J.-** Applicant Ghulam Qadir seeks post arrest bail in Crime No. 70 of 2021 registered at police station B-Section Dadu for offence punishable under Section 324, 337-A(i), F(i), F(iv), 147, 148, 149, 504 PPC, after rejection of his bail plea by the trial court vide order dated 07.01.2022.

2. Brief facts of the prosecution case are that accused Hakim restrained Complainant from purchasing milk near his house. On the day of incident accused Hakim and Gul Bahar both armed with hatchets while applicant Ghulam Qadir armed with danda came at the place of incident and caused hatchet as well as danda blows to Complainant on his head, face and back. On cries of Complainant his father Muhammad Ibrahim and his brother Manzoor were attracted to the place of incident for his rescue. Thereafter, it is alleged that accused Hakim caused hatchet blow to father of Complainant namely Muhammad Ibrahim on his head and accused Gul Bahar also caused hatchet blow on his back and neck who fell down and was bleeding. It is further alleged that applicant Ghulam Qadir caused danda blow to the brother of Complainant namely Manzoor over his left eye and on their cries villages came at the scene of offence and the accused persons on seeing them fled away. After registration of FIR applicant approached up to the Honourable Supreme Court for pre-arrest bail but the same was declined; thereafter, he surrendered before the trial court and moved an application for post arrest bail.

3. Learned counsel for applicant contends that the applicant is innocent and he has been falsely implicated in this case with malafide intention and ulterior motives; that there is delay of five (05) days in lodgment of FIR and no plausible explanation has been furnished by the Complainant for such inordinate delay; that injury attributed to present applicant was declared as Shajja-e-Khafifa u/s337-A(i) PPC which is bailable; that as far as common intention / common object is concerned it requires evidence and case requires further inquiry. He finally prayed for grant of bail.

4. On the other hand, learned A.P.G. assisted by learned counsel for Complainant states that the applicant is nominated in the FIR with specific role of causing danda injury to P.Ws Manzoor on his left face; that Honourable Supreme Court has declined pre-arrest bail to present applicant and he has moved this application without any fresh ground; that this court has already refused bail to co-accused Hakim and Gul Bahar; that offence falls within the prohibitory clause of Section 497 Cr.P.C.; therefore, the applicant is entitled for grant of post-arrest bail.

5. Heard learned counsel for applicant, learned counsel for Complainant, learned A.P.G. and perused the material available on record.

6. It is a matter of record that pre-arrest bail was declined to applicant by Honourable Supreme Court vide order dated 25.11.2021 but I am clear in my mind that consideration for grant of pre-arrest and post arrest are entirely different and this is a 1<sup>st</sup>.post arrest bail of applicant before this court, therefore, it is requirement of law for this court to decide the bail application on it's merits.

7. Admittedly it is alleged in the first portion of FIR that accused Hakim, Gul Bahar and Ghulam Qadir had caused hatchets and danda blows to Complainant Shaman on his head, face and back. As per medical certificate, Complainant Shaman had received three injuries; out of them, two were declared as other hurts u/s 337-L(ii) PPC and one was declared as Shajjah-e-Khafifa u/s 337-A(i) PPC all are bailable whereas in the second portion of incident, complainant has specifically attributed injuries to all 3 accused including applicant by alleging that accused Hakim and Gul Bahar caused hatchets bellows to Muhammad Ibrahim on his head and backside of neck which are on vital parts of the body and were declared grievance one u/s 337 F (ii) (iv) PPC whereas it is alleged that applicant caused danda blow to P.W /

injured Manzoor on right side of face which was declared as Shajja-e-Khafifa u/s 337-A(i) PPC which is bailable. Point raised by learned council for complaint that this court has already dismissed post arrest bail of co-accused Hakim and Gul Bahar, therefore, he is not entitled for bail is not right for the reason that case of applicant is on different footings as injury attributed to him was bailable and punishable for two years. In my considered view sharing of common intention / common objection for the charge u/s 324 PPC requires further inquiry in terms of Section 497(2) Cr.P.C. It is informed that the investigation of the case is complete and the applicant is no more required for further investigation and no useful purpose would be served by keeping him behind the bars till conclusion of the trial. The Honourable Supreme Court in the case of Zaigham Ashraf v. The State (2016 SCMR 18) has held as under:-

“ To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised by the Judges in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with capital punishment. The Courts are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.”

8. In view of the above a case for Post arrest bail has been made out. Therefore, applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of learned trial court.

Needless to mention that the observations made hereinabove are tentative in nature and would not prejudice the case of either party at trial.

JUDGE

