

IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA

Crl. Bail Appln. No. S- 258 of 2021.

Applicant: Raheem Bux alias Hakim Ali Chachar, through Mr. Riaz Ahmed Soomro, Advocate.

The State: Through Mr. Muhammad Noonari, DPG.

Complainant: Ali Murad through Mr. Farooque Ali Bhutto, Advocate.

Date of hearing: 02.08.2021.
Date of order: 06.08.2021.

ORDER

Adnan-ul-Karim Memon, J:- Applicant Raheem Bux alias Hakim Ali Chachar, seeks indulgence of this court against the order dated 01.06.2021, passed by the learned Additional Sessions Judge, Kashmore, whereby bail before-arrest was denied to him in FIR No.48/2021 registered with Police Station Bakhshapur for offenses under Sections 324, 337-H (2), 147, 148 and 149 P.P.C.

2. The accusation against the applicant is that on 21.4.2021, the applicant-accused made pistol fire upon the complainant's brother Bahadur Ali hitting at his left side of the abdomen. However, the report of the incident was made to police on 24.5.2021.

3. Mr. Farooque Ali Bhutto learned counsel for the complainant pointed out that the active role of making pistol fire is attributed to the applicant-accused; that Medico Legal Certificate shows firearm injury was received by injured on the left lumber region which exited near his belly button. Further, 161 Cr.P.C statements of PWs have also supported the version of the complainant. It has been argued that the complainant was busy in the treatment of the injured, therefore, he could not lodge FIR during the intervening period as discussed supra.

4. Mr. Riaz Ahmed Soomro, learned counsel for the applicant rebutted his stance by arguing the matter of the applicant with the assertion that the applicant-accused is innocent; he has been falsely implicated in this case with malafide intention and ulterior motives on account of previous dispute/ill-will between the parties, which is admitted and evident in the FIR itself; that

complainant has implicated all the male members of the one and same family in this case; that there is the inordinate and scandalous delay of considerable period in lodging the FIR for which no cogent and plausible explanation has been furnished by the complainant; that the place of incident is an open place but no independent person has been cited as the witness of the incident; that ocular account stands contradicted by medical evidence and in the absence of an independent witness from the public applicant's general participation, resulting into an injury on a non-vital part of the body of injured particularly in the absence of repeated fire shot squarely brings his case within the remit of further probe. He prayed that interim pre-arrest bail already granted to the applicant may be confirmed on the same terms and conditions.

5. Mr. Muhammad Noonari, learned DPG has argued that the grounds taken by the applicant are not only beside the mark but also cannot be attended without undertaking an in-depth analysis of the prosecution case, an exercise forbidden by law at bail stage. In a daylight affair, one person sustained firearm injuries besides the one having endured violence through blunt means and as such requires no public support to drive home the charge; their statements supported by medical examinations of even date, cumulatively bring applicant's case prima facie within the mischief of section 324 of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view whereof, he cannot be released on bail in the absence of any consideration within the purview of subsection (2) of section 497 of the Code *ibid*. Similarly, murderous assault as defined in the section *ibid* draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. He prayed for dismissal of the instant bail application.

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

7. From case papers, it appears that the injuries to the brother of complainant having been declared by Doctor are not dangerous. It is noted that this incident has been taken place on the basis of certain dispute, therefore, under these circumstances sending to the applicant-accused to jail would not

serve any purpose. In this view of the matter, the applicant-accused has made out his case for confirmation of bail, therefore, this bail application is allowed and the interim order dated 09.06.2021 already passed by this Court stands confirmed on same terms and conditions with directions to the applicant to appear before Trial Court to face trial and the learned Trial Court is directed to proceed with the matter expeditiously and decide the same as early as possible preferably within the period of three (03) months after receipt of this Order and no unnecessary adjournment shall be granted to either side.

8. Needless to mention here that observation if any, in this order is tentative in nature and shall not effect the merits of the case.

9. Before parting with this order, I would like to make it clear that in case during proceedings if, the applicant misuse the concession of bail, then presiding officer of the Trial Court would be competent to cancel the bail of the applicant without making any reference to this Court.

Judge

Ansari