

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 464 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

**15.09.2021** :

Mr. Farhad Khan, advocate for the applicant a/w the applicant.

Complainant Sunny s/o Shakil present in person.

Ms. Rubina Qadir, D.P.G. a/w SIP Haji Khan Kolachi of P.S. Kharadar.

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**NADEEM AKHTAR, J.** – Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to bail pending trial in Crime No.119/2021 registered against him on 13.02.2021 at P.S. Kharadar Karachi South under Sections 147, 148, 149 and 324 PPC. Vide order dated 18.03.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.70,000.00 and a P.R. bond for the same amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Sunny S/O Shakeel, a few days prior to the date of the incident he had a fight with the present applicant Farhan and his brother Munna ; on the date of incident i.e. 12.02.2021 at about 10:30 pm he was attacked on a public street viz. Thokar Gali by the applicant, his above named brother and 6-7 other persons ; all the said attackers kicked and punched him, one of them fired a shot and the said Munna attacked him with a knife under the chest near the left lung ; the applicant hit him with the butt of a pistol near his right eye and cut the finger of his left hand with a knife ; meanwhile the mohalla people gathered and rescued him from the attackers whereafter all the attackers ran away from the place of the incident ; thereafter the mohalla people took him to Civil Hospital in a rickshaw for initial medical treatment ; and, he could recognize the companions of the applicant and Munna. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant / accused by the learned XI<sup>th</sup> Additional Sessions Judge Karachi South vide order dated 18.02.2021 passed in Pre-Arrest Bail Application No.677/2021. However, vide order dated 27.02.2021 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the complainant due to enmity ;

the element of enmity can be gauged from a bare perusal of the FIR itself which specifically refers to a previous fight between the complainant and the applicant ; the injury allegedly caused to the complainant falls within the definition of *Shajjah-i-Khafifah* which is a bailable offence ; Section 324 PPC has been wrongly and deliberately inserted in the FIR only in order to make the alleged offence more serious and non-bailable ; there is apparent malafide on the part of the complainant and police ; the place of the alleged incident was admittedly a public thoroughfare, however, no private or independent witness was associated to act as a witness of the alleged crime ; names of the mohalla people who allegedly rescued the complainant from the attackers have not been disclosed in the FIR ; the applicant does not have any previous criminal record ; if he is arrested, he will have to face torture by the police and humiliation in the eyes of public ; and, the applicant has been regularly attending the case before the trial Court.

4. The complainant, who is present in person, as well as the learned DPG have reiterated the contents of the FIR and have prayed for the dismissal of this bail application. Learned DPG, however, points out that investigation in this case has been completed and challan has been submitted before the learned trial Court. He also points out that the co-accused / applicant's brother Munna is absconding in the case before the trial Court.

5. I have heard learned counsel for the applicant, learned DPG and the complainant, and have also examined the material available on record, particularly the police papers submitted by learned DPG. The medical report of the complainant available in the police papers states that the complainant had suffered (i) single abrasion over the right eyebrow and (ii) a stab wound in the epigastric region which was "superficial" and was not bleeding. The final medical report states that the wound was "normal" and "superficial", and the complainant was treated in the emergency room (E.R.) and was discharged on the same day. The stab wound mentioned at number (ii) in the medical report was admittedly made by Munna and not by the applicant. The role assigned to the applicant in the FIR was only to the extent of hitting the complainant with the butt of a pistol near his right eye and cutting the finger of his left hand with a knife. The abrasion over the right eyebrow mentioned at number (i) in the medical report has been classified in the medical report itself as *Shajjah-i-Khafifah* ; whereas, the cut on the finger is not mentioned in the medical report. The question whether the abrasion over the right eyebrow allegedly caused by the applicant falls under Section 324 (attempt to commit *qatl-i-amd*) as alleged in the FIR, or under Section 337-A (punishment for *shajjah*), requires further

inquiry and such question can be decided only by the trial Court. However, in view of the above, *prima facie*, it appears that the above offence alleged against the applicant is bailable and does not fall within the prohibitory clause of Section 497 Cr.P.C. The other offences alleged against the applicant under Sections 147, 148, 149 are undoubtedly bailable. Accordingly, the principle that grant of bail in such offences is a rule and refusal an exception, authoritatively and consistently enunciated by the Hon'ble Supreme Court, is attracted in the instant case.

6. According to the prosecution's own case, the incident took place at a public thoroughfare in the densely populated area of Juna Market, Kharadar, Karachi, at 10:30 pm, which could not be deemed to be deserted at the time of the alleged crime. As per the FIR, the mohalla people were also present there who rescued the complainant from the alleged attackers. Despite this position, not a single private and independent person was associated to act as a witness and the FIR does not specifically state as to how many persons were asked to act as witness and the names of such persons have also not been disclosed.

7. Admittedly, investigation in this case has been completed and challan has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court.

8. In view of the above, the applicant / accused has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 18.03.2021 is hereby confirmed on the same terms and conditions. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

This bail application is allowed in the above terms.

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