

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

Cr. Bail Application No.S-278 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
-------------	---

1. For orders on office objections.
2. For hearing of main case.

Date of hearing : 10.09.2021
Date of order : 10.09.2021

Mr. Altaf Hussain Chandio, Advocate alongwith applicant.
Mr. Mushtaque Hussain Khaskheli, Advocate alongwith complainant.
Mr. Shahid Ahmed Shaikh, Additional P.G for the State.

=

NAIMATULLAH PHULPOTO, J.- Applicant / accused Attaullah S/o

Abdul Qadir Katiyar seeks pre-arrest bail in Crime No.08 of 2021 registered at P.S Taluka Nawabshah for offences under Sections 324, 337-F(v), 337-H(ii), 447, 109, 147, 148 PPC. Previously, applicant / accused applied for pre-arrest bail before learned IIIrd Additional Sessions Judge, Shaheed Benazirabad, the same was rejected by him vide order dated 31.03.2021. Thereafter, applicant / accused has approached to this Court.

2. In the F.I.R lodged by complainant Fateh Muhammad Brohi on 31.01.2021 at 1700 hours, it is alleged that present incident occurred on 30.01.2021 at 07:30 p.m. at the plot of one Abdul Malik Brohi. It is alleged that applicant Attaullah fired from his pistol with intention to kill Jameel Ahmed, the cousin o the complainant, the fire hit him at his shoulder and he fell down. Applicant alongwith other accused by making aerial firing succeeded in running away. F.I.R of the incident was lodged as stated above. The injured was referred to the hospital. The Medical Officer certified that injured Jameel Ahmed has received firearm injury at his shoulder and it was through and through. The Investigation Officer recorded 161 Cr.P.C statement

of injured Jameel Ahmed, in which he has fully implicated the applicant / accused. During investigation, co-accused jointed investigation but applicant / accused shifted to some unknown place and could not be arrested. Challan was submitted by the Investigation Officer against co-accused for offences under Sections 324, 337-F(v), 337-H(ii), 447, 109, 147, 148 PPC in which the present applicant / accused was shown as absconder. Thereafter, the applicant obtained interim pre-arrest bail from the Court of learned IIIrd Additional Sessions Judge, Shaheed Benazirabad vide order dated 10.03.2021. Subsequently, it was recalled vide order dated 31.03.2021.

3. Learned Advocate for the applicant / accused mainly contended that there was delay in lodging of the F.I.R for which no plausible explanation has been furnished. It is further argued that fire was not repeated, which shows that applicant / accused had no intention to kill the injured. Lastly it is submitted that the alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C. In support of his submissions, he has relied upon the cases of HAYAT MUHAMMAD KHAN v. The STATE and another (2017 P.Cr.LJ Note 144) and ASGHAR ALI v. The STATE and another (2018 YLR Note 110).

4. Learned Additional Prosecutor General assisted by learned Advocate for the complainant argued that the applicant / accused has been specifically named in the F.I.R with specific role of causing firearm injury to PW Jameel Ahmed; ocular evidence is corroborated by the medical evidence. It is further submitted that the element of mala fide which is basic requirement for grant of pre-arrest bail is missing in this case. So far the delay in lodging of F.I.R is concerned, it is submitted that it has been sufficiently explained by the complainant. Learned Additional P.G has opposed an application for pre-arrest bail to the applicant / accused. In support of his submissions, he has

relied upon the cases reported as 2018 P.Cr.LJ Note 154, 2012 MLD 586, 2000 P.Cr.LJ 1826 and 1997 P.Cr.LJ 2085.

5. I have carefully heard learned Counsel for the parties and perused the F.I.R, 161 Cr.P.C. statements of the PWs, particularly injured Jameel Ahmed and medical certificate. So far the contentions of learned Advocate for the applicant that injured has received firearm injury on non-vital part of his body and fire was not repeated is concerned, such contentions are without merit. Prima facie, case of accused falls within the mischief of section 324 of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view whereof, accused 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 as held in the case of SHEQAB MUHAMMAD v. THE STATE and others (2020 SCMR 1486).

6. Applicant / accused is seeking pre-arrest bail in this case but learned Counsel for the applicant has failed to convince the Court regarding following ingredients, which are essential for grant of pre-arrest bail:-

- i) *Grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situation to protect innocent persons against victimization through abuse of law for ulterior motives;*
- ii) *Pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;*

- iii) *Not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the Police; to cause irreparable humiliation to him and to disgrace and dishonor him;*
- iv) *Such accused should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief to equity.*

7. Applicant / accused has not been able to make out a case for grant of extraordinary relief of pre-arrest bail. Moreover, applicant had fired upon PW Jameel Ahmed, who has fully implicated him in his 161 Cr.P.C statement. Apparently, ocular evidence is corroborated by the medical evidence. After commission of the offence, applicant / accused absconded away during investigation. Deeper appreciation of evidence / material is not permissible at bail stage, at this stage only tentative assessment of material is to be made. Prima facie, there appear reasonable grounds for believing that applicant has committed the alleged offence. Therefore, no case for grant of pre-arrest bail to the applicant is made out. As such, applicant is not entitled for grant of pre-arrest bail. Resultantly, instant bail application is dismissed and interim pre-arrest bail already granted to the applicant vide order dated 07.04.2021 is hereby recalled.

8. Needless to mention that observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

Shahid