

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1198 of 2021

Date	Order with signature of Judge
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Applicant : Abrar Ahmed Siddiqi, through
Mr. Waqas Ali Chaudhry advocate.
Complainant : Mst. Ana, through
Mr. Jahanzeb Baloch, advocate.
The State : Mr. Hussain Bakhsh Baloch, Addl. P.G.
Date of hearing : 01.11.2021.

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NADEEM AKHTAR, J. – Through this bail application under Section 498 Cr.P.C., the applicant Abrar Ahmed Siddiqi has sought admission to bail pending trial in Crime No.521/2021 registered against him on 26.05.2021 at P.S. Zaman Town, Korangi, Karachi, under Section 324 PPC. Vide order dated 23.06.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.100,000.00 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 Mst. Ana, the present applicant / accused, who was her husband, attacked her with a knife on 25.05.2021 in their house with intention to kill her ; she received a stab wound in her abdomen from the applicant in the circumstances narrated in the subject FIR ; after causing injury to her, the applicant escaped from the scene of crime whereafter someone called the police on 15 ; after arrival of police, she went to the police station and obtained the letter for medical treatment and went to Jinnah Hospital ; and, she then lodged the FIR. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant / accused by the learned Sessions Judge Karachi East vide order dated 31.05.2021 passed in Pre-Arrest Bail Application No.2748/2021. However, vide order dated 10.06.2021 the aforesaid bail application filed by the applicant was dismissed by the learned 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 as she wanted to take revenge from him because he had divorced her ; there were two eye witnesses of the alleged incident and both of them had stated that the injury of the complainant was self-inflicted ; in view of the contrary versions of the complainant and the eye witnesses, the allegation made by the complainant

against the applicant has become doubtful which requires further inquiry and as such he is entitled to the concession of bail ; the weapon i.e. the knife from which the injury was allegedly caused was never recovered either from the applicant or from the scene of the alleged crime ; the applicant does not have any previous criminal record ; there was a considerable delay in lodging the FIR ; investigation in the subject crime has been completed and the charge sheet has been submitted before the trial Court ; and, there is no possibility that the applicant will tamper with the evidence or will influence the witnesses of the prosecution if the interim bail granted to him is confirmed. Learned counsel relied upon Saqib & others V/S The State and others, **2020 SCMR 677**, Farooq Khan & another V/S The State and another, **2020 YLR 292**, and Rehman alias Peer V/S The State and another, **2017 YLR Note 428**, in support of his submissions.

4. On the contrary, it was contended by learned counsel for the complainant that the applicant has been specifically nominated in the subject FIR with a specific role of attacking and injuring the complainant with a knife with the intention of killing her ; the offence committed by the applicant is non-bailable and falls within the prohibitory clause of Section 497 Cr.P.C. ; the allegation of revenge or enmity against the complainant is false and baseless ; the delay in lodging the FIR was justified and was satisfactorily explained by the complainant as she was in hospital for medical treatment and the FIR was lodged by her as soon as she was discharged from the hospital ; and, in the facts and circumstances of the case, the applicant is not entitled to the concession of bail. In support of his above submissions, learned counsel placed reliance upon Muhammad Jahangir Khan and others V/S The State and others, **2020 SCMR 1270**, Habibullah Jan and another V/S The State through A.G. Khyber Pakhtunkhwa and others, **2020 SCMR 1278**, Muhammad Arshad and another V/S The State and another, **1996 SCMR 74**, Muhammad Irshad and others V/S Amanat Ali and another, **2004 SCMR 1375**, Muhammad Aslam and another V/S The State, **2007 SCMR 1412**, and Muhammad Sadiq and others V/S The State and another, **2015 SCMR 1394**.

5. The learned APG, while adopting the arguments advanced on behalf of the complainant, further submitted that the applicant has not alleged malice on the part of the police. It was conceded by him that no recovery was made from the applicant or from the scene of the alleged crime. It was also conceded by him that the two eye witnesses had stated that the injury of the complainant was self-inflicted, and their version was contrary to the version of the complainant. It was confirmed by him that the investigation in this case has been completed and the charge sheet has been submitted before the trial Court. It was pointed

out by him that Section 337-D PPC was also included in the charge sheet as the injury was declared as *Jurh Jaifah* in the final medico legal report of the complainant.

6. I have heard learned counsel for the applicant and complainant and the learned DPG, and have also examined the material available on record, particularly the police papers submitted by learned DPG. The complainant has alleged in the FIR that the applicant attacked her with a knife on 25.05.2021 in their house with the intention of killing her and she received a stab wound in her abdomen as a result of such attack. This allegation has been denied by the applicant by claiming that the complainant became enraged and violent as he had divorced her and the stab wound was inflicted by her in her abdomen with a knife in order to take revenge from him and to teach him a lesson. Admittedly, the knife from which the injury was allegedly caused was never recovered either from the applicant or from the scene of the alleged crime. There were two eye witnesses of the incident, a neighbour of the parties and a minor daughter of the complainant. The statement of the said neighbour was recorded under Section 161 Cr.P.C., wherein he had stated that the injury was inflicted by the complainant herself. ASI Liaqat Ali, who had received the telephone call on 15 and had immediately visited the scene of the alleged crime, also recorded his statement under Section 161 Cr.P.C., wherein it was stated by him that the minor daughter of the complainant had disclosed to him that her mother (complainant) had stabbed herself in the abdomen with a knife. Thus, both the eye witnesses had supported the version of the applicant that the injury was self-inflicted by the complainant. The discharge summary and the final medico-legal report of the complainant indeed show that there was a knife wound in her abdomen, but they do not specify whether it was self-inflicted or otherwise although the medico-legal officer was competent enough to identify such nature of the wound and to mention it in his report. The question as to which of the two versions is correct is of utmost importance as the conviction or acquittal of the applicant rests solely on this question which can be decided only at the time of the trial on the basis of the evidence led by the prosecution and the applicant. Needless to say thorough or deep scrutiny of evidence is not permissible at the stage of bail nor is the requirement of law ; however, in order to form a tentative opinion as to whether or not the accused is prima facie connected with the commission of the offence, the Court is not precluded from tentatively assessing the evidence of the eye witnesses, the witnesses of the recovery, the medical reports, cross-versions, other connecting evidence and the plea of defense, if any.

7. The above discussion clearly implies that this is a case of further inquiry. It is settled law, as held by the Honble Supreme Court in Ehsanullah V/S The State, 2012 SCMR 1137, that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as of right and not by way of grace or concession. Regarding the submission made on behalf of the complainant that the offence falls within the prohibitory clause of Section 497 Cr.P.C., suffice it to say bail cannot be refused merely on the ground that the offence falls within the said prohibitory clause if upon a tentative assessment of the evidence the case otherwise appears to be that of further inquiry and or the accused succeeds in making out a case for the grant of bail. The cases cited and relied upon by learned counsel for the complainant are clearly distinguishable as the question of more than one versions regarding the commission of the offence or the statements of eye witnesses were not involved in any of them.

8. Admittedly, the investigation in this case has been completed and the charge sheet 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.

9. In view of the above, the applicant / accused Abrar Ahmed Siddiqi has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 23.06.2021 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.

J U D G E