

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1886 of 2022

Applicant : Muhammad Shakeel through
Mr. K-Jahangeer, advocate.

Respondent : The State
Through Mr. Khadim Hussain,
Addl. Prosecutor General, Sindh

Complainant : Hamid Fareed, through Mr. Irfan Ali,
advocate

Date of hearing : 29.12.2022

Date of order : 29.12.2022

ORDER

ADNAN-UL-KARIM MEMON, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.335/2022 under Section 324 PPC, registered at PS Aram Bagh, after his bail plea has been declined by the learned IX-Additional Sessions Judge Karachi South vide order dated 15.09.2022, he has approached this court.

2. The allegations against the applicant are that on 30.07.2022, he assaulted upon the complainant and his sister in law, with Hatchet and caused injuries on frontal region of head and right side hand of complainant; he also caused injuries to his sister in law on her right side of the body, such report of the incident was lodged at PS Arambagh, Karachi on 7.8.2022.

3. Mr. K. Jahangeer, learned counsel for the applicant has argued that from the contents of FIR it is transpired that there is enmity between the husband and ex-wife / sister-in-law of the complainant on matrimonial affairs and complainant has been used to book the present applicant in the aforesaid crime, with ulterior motives; that the alleged injuries on their bodies are not out of the alleged incident because they failed to approach the MLO for treatment in time and waited for longtime and succeeded in obtaining the letter for MLO who failed to point out any injuries punishable with penal code. He added that complainant was allegedly admitted in JPMC surgical Ward on 11.8.20222 thus it belies the version of the complainant. He further argued that the alleged incident took place at day time and place of incident is also

thickly populated area inspite of this no private witness was associated therein. He further argued that FIR is silent about the alleged injury sustained by ex-wife/sister in law of complainant on her right hand finger allegedly damaged by sharp edged weapon, however she improved her version by recording belated statement on 15.08.2022 under section 161 Cr.P.C; that no recovery of alleged weapon i.e. Axe has been made from the possession of applicant, rather the same was managed and subsequently produced by the compliant; and even till today no report of chemical examiner has been obtained as to whether the same was used or otherwise. He further argued that no medical report has been obtained about the alleged injuries sustained by Mst. Samreen sister in law of complainant on her right hand finger claiming to have damaged due to sharp cut injury, hence, the case of the applicant requires further inquiry in terms of section 497 (2) Cr.P.C; that no final Medical report is available to connect the applicant with the alleged crime. He added that there is considerable delay in lodging the FIR. In support of the case he relied upon in the case of Pervaiz Khan and another v. The State (2022 SCMR 393), Abdul Ghafoor v. The State (2022 SCMR 1527), Kashif Ali alias Kalu v. The State (2022 SCMR 1515), Ali Raza v The State (2022 SCMR 1245), Javed Iqbal v. the State (2022 SCMR 1424), Chaudhry Nadeem Sultan v. The State (2022 SCMR 663). Lastly he prayed for allowing the bail application.

4. Mr. Khadim Hussain, learned Addl. Prosecutor General, Sindh Assisted by the learned counsel for the complainant has supported the impugned order passed by the learned trial court while rejecting the bail plea of the applicant. Learned counsel for the complainant has argued that the applicant has caused serious injuries to the complainant and medical report supports the version of complainant. Learned counsel for the complainant submitted that even it is not necessary that the victim should suffer an injury and, in a case, where the offence is committed with an intention to commit the murder of the victim, Section 324 PPC would be attracted and in the present case applicant has assault upon the victims with sharp edged weapon, however, they saved. He further argued that in the instant case, the applicant used the axe with which he inflicted injury on the victims on the vital part of the body i.e. head and hand. Considering the weapon of offence and the vital part of the body where the injury was inflicted the intention of the applicant to commit murder was/is evident, therefore he is not entitled for the concession of post arrest bail. He added that delay per se in lodging of the FIR is not a valid ground to gauge the veracity of the prosecution witnesses; and at this bail stage, benefits of the same if any,

should not be given to accused. He prayed for the dismissal of the instant bail application.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. From the tentative assessment of the record, it reveals the following aspect of the case, needs to be examined by the trial court to figure out the actual reason of the alleged incident took place on 30.07.2022 and reported on 07.08.2022 with delay of approximately eight days ;

i) That from the contents of FIR it is transpired that there is family dispute between the husband and ex-wife on matrimonial affairs based on untrustworthiness;

ii) That the alleged injuries have not been finalized by Doctor whether the injuries are punishable with penal code or otherwise.

iii) That complainant was allegedly admitted in JPMC surgical Ward on 11.8.2022 thus it could not be ascertained, in the intervening period, what happened i.e. from the date of alleged incident and admission as the report of I.O is silent.

iv) That the incident took place at day time and place of incident is also thickly populated area inspite of this no private witness was associated therein as no reason has been assigned by I.O.

v) that FIR is silent about the alleged injury sustained by sister in law of complainant on her right hand finger allegedly cut by sharp edged weapon, however, prima-facie she improved her version by recording belated statement under section 161 Cr.P.C before I.O;

vi) that no recovery of weapon i.e. Axe has been effected from the applicant at the time of arrest, rather the same weapon was produced by the compliant before the I.O and even till today no report of chemical examiner has been obtained to the effect whether the same contained human blood or otherwise.

vii) that no medical report has been brought on record about the alleged injuries sustained by Mst Samreen on her hand claiming to have received sharp cut injury of her right hand finger, hence, the case of the applicant requires further inquiry.

viii) No final ML Report is available on record to opine for and against.

ix) that the delay in lodging the FIR a serious lapse unless and until it is plausibly explained and the benefit of the same at the bail stage is required to be given to accused.

7. in view of the aforesaid factum of the case, the detention of the applicant pending trial can only be justified if his case falls within the scope of any of the exceptions quantified in the decisions rendered by

the Honourable Supreme Court in the cases of *Tariq Bashir v. State* **PLD 1995 SC 34**; *Muhammad Tanveer v. State* **PLD 2017 SC 733** and *Zafar Iqbal v. Muhammad Anwar* **2009 SCMR 1488**, there is, however, nothing on record that may attract any of the said exceptions and justify denial of post arrest bail to the applicant at this stage.

8. From the forgoing, it seems that the learned trial Court has not exercised its discretion judiciously in denying the relief of post arrest bail to the applicant.

9. At this stage, I am of the tentative view that the applicant has been able to make out a case for post arrest bail in the aforesaid F.I.R. This bail application is, therefore, allowed, the applicant is admitted to bail subject to his furnishing the bail bond in the sum of Rs. 200,000/- with one surety in the like amount to the satisfaction of the trial Court.

10. Needless to mention here that the observations made hereinabove are tentative and shall not affect the trial Court to decide the matter on merits.

JUDGE

Shahzad Soomro