

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-953 of 2021

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

22.11.2021.

M/s. Mian Taj Muhammad Keerio and Peeral Majeedano,
Advocates for applicant.

Mr. Nazeer Hussain Jarwar, Advocate for complainant.

Mr. Shahzado Saleem Nahiyoon, Additional P.G.

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MUHAMMAD IQBAL KALHORO, J.- On account of a dispute over agricultural land, allegedly applicant alongwith his three brothers duly armed with weapons attacked complainant party on khipro-khahi road adjacent to Otaq of Jam Punhoon Khaki and injured two PWs namely Sawan who sustained injuries under Section 337-A(i) and 337-L(ii) PPC which are bailable, while PW Uris sustained firearm injury falling under Section 337-F(vi) PPC which is punishable for seven years and is non-bailable. Applicant is alleged to have fired at complainant but did not hit him as he ducked down to save himself.

2. Applicant initially was granted ad-interim pre-arrest bail by the trial Court which subsequently was dismissed vide order dated 28.09.2021 and on the same date he was taken into custody. He was interrogated and led police party to a forest wherefrom he produced a pistol used by him in the offence which he had concealed there.

3. Learned Defence Counsel has argued that applicant is innocent; there is delay of 22 hours in registration of FIR; there is admitted enmity between the parties; four brothers including applicant have been implicated in this case. No role except ineffective firing has been attributed to him; the case has been challaned and he is no more required for further investigation; applicability of Section 324 PPC in view of the fact that he is not shown to have repeated the fire is yet to be determined.

4. On the other hand, complainant's Counsel and learned Additional Prosecutor General both have opposed bail on the ground that applicant is named in FIR with specific role of firing at the complainant party which is

sufficient proof of his sharing common intention with the main accused. Learned Counsel for complainant in support of his submissions has relied upon the case of BILAL KHAN v. The STATE through P.G, Punjab and another (2020 SCMR 937).

5. I have considered submissions of the parties and perused material available on record including the case law. Although, in FIR applicant is nominated but he has not been attributed any injury sustained by the PWs. The PWs admittedly were injured at the hands of other accused who happened to be applicant's brothers. Although, applicant is said to have fired upon the complainant but the contents of FIR show that he did not hit him and did not repeat the fire which prima facie means that applicability of section 324 PPC qua applicant is yet to be determined in the trial. Although, after arrest a weapon is said to have been recovered allegedly used by him in the offence but there is no matching profile to show that this weapon was actually used by him at the time of incident. In addition, the case has been challaned, investigation is over and applicant is in jail. Bail does not mean acquittal but it is a different arrangement than jail to make sure that accused during pendency of the trial appears before the trial Court to face the charge against him. Therefore, I am of the view that applicant has been able to make out a case for bail. Accordingly, both the applications are allowed and applicant is granted post arrest bail against furnishing a separate surety in each case in the sum of Rs.100,000/- (Rupees Hundred Thousand) and P.R Bond in the like amount to the satisfaction of the trial Court.

6. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE

Shahid