

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-325 of 2023

Applicant: Allah Dino s/o Muhammad Bux Sethar through Mr. Ashfaqe Ahmed Mallah advocate.

Complainant: Juman through Mr. Zarab Hyder Memon advocate.

Respondent: The State through Mr. Shahzado Saleem Nahiyoon, Addl. PG.

Date of hearing: **29.05.2023**

Date of Order: **29.05.2023**

O R D E R

KHADIM HUSSAIN SOOMRO, J:- Through the instant criminal bail application, applicant/accused named above seeks his post-arrest bail in Crime No.72 of 2022, under sections 324, 504, 109 and 34, PPC, registered at P.S Nindo, District Badin, after his bail plea was declined by the learned Additional Sessions Judge-I/MCTC, Badin vide order dated 14.03.2023.

2. The complainant lodged FIR stating therein that the marriage of his daughter Mst. Shahnila was solemnized with Allah Dino, who is a resident of village Khair Muhammad Chandio, Taluka Badin, and there was a dispute with the daughter of complainant Mst. Shahnila as she filed a Suit for the dissolution of marriage against him, and he became annoyed. On 05.11.2022 complainant, his son Nazir Ahmed and other inmates of the house were present in the house, and they saw on the solar light at 1000 hours accused Allah Dino was armed with a gun, and Ashique Ali was armed with lathi. As soon as they entered the house, the accused Allah Dino made straight fired upon the daughter of the complainant Mst. Shahnila, in their presence, which hit her in the belly region, and blood was oozing, thereafter the lady was shifted to the hospital for treatment and certificate, and thereafter the complainant lodged his FIR as stated above.

3. Learned counsel for the applicant/accused submitted that there is a delay of about five days in the registration of FIR. However, the distance between the place of the incident and the police station is only 20 kilometres. The complainant got further statement recorded whereby he exonerated the accused Ashique Ali Sethar. He was released under section 169, Cr.P.C. by the police, but subsequently learned Magistrate did not agree with the investigation of I.O and took the cognizance and joined him as accused in the case; the weapon was not recovered from the exclusive possession of the applicant/accused, but the same was recovered from Rajab Ali. The defense

counsel further contented that there was a matrimonial dispute between the parties; therefore, the false implication cannot be ruled out.

4. On the other hand, learned counsel for the complainant submitted that name of applicant/accused Allah Dino is explicitly mentioned in the FIR with the direct role of causing firearm injury to the injured Mst. Shahnila. Per him, eyewitnesses namely Nazir Ahmed and injured PW Mst. Shahnila have recorded their statements under section 161, Cr.P.C and have fully implicated the present applicant/accused with the commission of offence; the medical evidence is completely corroborative with the ocular version of the eyewitnesses.

5. Learned Addl. P.G while adopting the arguments of learned counsel for the complainant, further pointed out that no doubt recovery affected from Rajab Ali but the same was on the pointation of principal accused Allah Dino and recovered weapon was sent to expert and FSL report is in positive. He lastly contended that the applicant/accused is not entitled to the concession of bail.

6. I have heard learned counsel for the applicant, complainant's counsel as well as learned Additional Prosecutor General Sindh and have gone through the material available on record with their assistance.

7. It is an admitted position that accused Allah Dino is nominated in the FIR with a specific direct role of causing firearm injury to the injured Mst. Shahnila, which hit her on the belly region, for which the doctor has issued a medical certificate and he opined such injury as 337-D, PPC, which provides punishment for 10 years as it falls under section 324, PPC, which provides punishment for 14 years. The offence under which the applicant accused is booked falls within the prohibitory clause of Section 497, Cr.P.C. During the investigation, the statements of PWs 161, Cr.P.C. have been recorded by the Investigating Officer, who have completely supported the version of the complainant. Further, the statement of injured PW Mst. Shahnila u/s 161, Cr.P.C was also recorded in the investigation, in which she categorically stated that the present applicant / accused made a straight fire upon her, which hit her on the belly/abdomen, and she sustained an injury at the hand of the applicant / accused. Admittedly, the doctor has declared the injury as Jurh Jaifah under section 337-D, PPC, which provides punishment for imprisonment for 10 years. But there is no mandatory rule to grant bail to an accused, especially in those injuries cases when he has caused multiple injuries to the injured. In this context, I have been guided by the Apex Court in the case of **Sheqab Muhammad vs. State (2020 SCMR 1486)**, wherein it has been observed as under:-

“Murderous assault vital and non-vital parts of victim’s body-Relevance-S.324, PPC drew no anatomical distinction between vital or non-vital parts of human body—Once the triggered was pressed and the victim was effectively targeted “intention or knowledge” as contemplated by Section 324, PPC was manifested-Course of a bullet was not controlled or steered by assailant’s choice nor could he claim any premium (at bail stage) for poor marksmanship.”

8. In view of the above discussion, I am of the tentative view *prima facie* that the applicant/accused, having a gun in his hand, made a straight fire upon injured Mst. Shahnila, which hit on her belly in the presence of the complainant party and other PWs, on some matrimonial dispute. The medical evidence is also corroborated with the ocular account. There is sufficient material available on record to connect the applicant/accused in the alleged offence, and in these types of cases, the applicant is not entitled to any concession of bail. Consequently, this bail application is **dismissed**.

9. Needless to state that the observations made in this bail application are purely tentative in nature and no any adverse influence can be drawn by the other side.

JUDGE