

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-197 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>08.05.2023</u>	For orders on office objection. For hearing of main case.
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Mr. Ayaz Ali Gopang, advocate for the applicant.

Mr. Ahmed Ali Jarwar, advocate for complainant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh along with Dr. Suhail Akhtar Channa and Dr. Sadam Hussain Channa, MLOs PMCH Shaheed Benazirabad.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely Imtiaz Khaskheli seeks post-arrest bail in Crime No.119/2022, registered at Police Station B-Section Nawabshah for the offence under sections 324, 337-H (ii), 148, 149, 504 PPC and sections 302, 337-A (i) and 337-F (iii) PPC added in charge sheet. Earlier the bail plea of the applicant/accused was declined by the learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad vide order dated 25.01.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case; that co-accused Gul Muhammad, against whom allegedly role was that he fired from his gun upon Muhammad Ayaz, who sustained pellet injury on his head, has been admitted to bail by the learned trial Court. Learned counsel pointed out that role assigned to the applicant/accused is of making firing which hit upon the knee of injured Asad Ali, as such, the case of applicant/accused is on better footing to that of co-accused, who has been admitted to bail; however, learned trial Court did not consider this aspect and dismissed the bail plea of the applicant/accused. He further pointed out that the applicant/accused is in jail and injury attributed to him is declared as under section 337-F (iii) PPC, which is punishable upto three years and does not fall within the ambit of prohibitory clause of section 497 (1) Cr.P.C. Learned counsel has also pleaded enmity with the complainant party and submit that entire family has

been roped in the instant case. He contended that the investigation is complete and the applicant/accused is no more required for further investigation. According to him this is a fit case for further inquiry and prayed for grant of bail to the applicant/accused. In support of his contentions, he has relied upon SBLR 2016 Sindh 713 and 2022 P Cr. L J Note 33.

4. On the other hand, learned counsel for complainant as well as learned A.P.G. Sindh have vehemently opposed the bail application; however, they stated that the case of co-accused who has been granted bail is quite different from the case of present applicant/accused, as such, he is not entitled for the concession of bail. They pointed out that the name of applicant/accused is appearing in the FIR with specific role. Learned counsel for the complainant in support of his contentions has relied upon the case reported in 2020 SCMR 1486 and unreported order passed in Criminal Bail Application bearing No.S-940 of 2018 by this Court.

5. Heard and perused.

6. Every person has right to get justice but come with clean hands. It seems that the complainant has involved entire family members as accused in this case. Complainant has assigned the role against co-accused Gul Muhammad that he has fired from his gun which hit to Muhammad Ayaz Khan and as per medical certificate, the injury fall under section 337-A (i) and weapon was used as hard and blunt substance. Whereas, allegation against the applicant/accused is alleged that he has fired from his pistol which hit to injured Asad Ali upon his upper side of knee and as per medical certificate such injury has been declared as *Mutalahima*, which is punishable upto three year. However, co-accused Gul Muhammad has been admitted to bail by the learned trial Court whereas, the applicant/accused is confined in jail. The offence with which the applicant is charged does not come within the ambit of section 497 (1) Cr.P.C. So far role as to common object relating to the applicant/accused is concerned that can be decided after recording evidence before the learned trial Court. Investigation is complete. Applicant/accused is no more required for further investigation and keeping him in detention will not improve the prosecution case. Further, it is the well-settled principle of law that at the bail stage only a tentative assessment is to be made.

7. In view of the above facts and circumstances and by taking the guidelines from the referred case laws, learned counsel for the applicant/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicant/accused is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and PR bond in the like amount to the satisfaction of learned trial Court.

8. It is made clear that if the applicant after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicant becomes absconder and fugitive to law, then the trial Court is fully competent to take every action against the applicant/accused and his surety including cancellation of bail without referring to this Court.

JUDGE

Abdullah Channa/PS