

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-437 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>11.05.2023</u>	<p>For orders on office objection. For hearing of main case.</p> <p>Applicant is present on interim pre-arrest bail.</p> <p>Mr. Ghulamullah Chang, advocate files Vakalatnama on behalf of applicant, taken on record.</p> <p>Ms. Rameshan Oad, Assistant Prosecutor General Sindh.</p>

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely, Shahid Ali seeks pre-arrest bail in Crime No.199/2022, registered at Police Station A-Section, Tando Allahyar for the offence under sections 324, 337-F (i), 337-F (iii), 337-H (ii), 147, 148, 149, 504, PPC. Earlier the bail plea of the applicant/accused was declined by the learned Sessions Judge, Tando Allahyar vide order dated 27.04.2023.

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/accused has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case; that all the co-accused have been granted bail by the learned trial Court except present applicant, as such, rule of consistency is also applicable to the case of applicant/accused; that co-accused Shahnawaz has also received injury and as per medical certificate such injury is falling under section 337-D PPC; that the case has been challaned, investigation is complete and the applicant/accused is attending the learned trial Court; that the applicant/accused is no more required for further investigation. Lastly, learned counsel prayed for grant of bail of the applicant/accused by relying upon the cases of *'MUHAMMAD ESSA v. THE STATE and another'* [2012 SCMR 646] and *'Malik MUHAMMAD ISLAM v. The STATE and others'* [2014 SCMR 1349].

4. On the other hand, learned A.P.G. Sindh has vehemently opposed the bail application. She contended that the applicant/accused was duly armed with deadly weapon has fired upon one Abbas Ali and as per

medical certificate injury caused to him is falling under section 337-F (iii) PPC and the kind weapon used is firearm. She further added that in the case of “*SHEQAB MUHAMMAD v. The STATE and others*’ [2020 SCMR 1486], the Hon’ble Supreme Court of Pakistan has dismissed the bail even firearm injury was not on the vital part of the body, as such the applicant/accused is not entitled for the concession of bail.

5. Heard and perused the record.

6. Admittedly the applicant has been nominated in the FIR with specific role that he along with co-accused duly armed with deadly weapons appeared at the place of incident viz. the house of the complainant party where present applicant/accused Shahid Ali made straight fire in order commit the murder of complainant party, which hit on left leg of injured Abbas Ali, the brother of complainant, who after receiving injury fell down. The ocular evidence is supported by the medical evidence. Further, the injury received by the complainant’s brother Abbas Ali falls under section 337-F (iii) PPC. In such circumstances, the section 324 PPC is very much applicable in the instant case. It is worthwhile to mention that the Hon’ble Supreme Court has been pleased to observe in the case of ‘*GHULAM QADIR v. The STATE*’ [2022 SCMR 750], the relevant observations are reproduced as under:-

“3. Contents of the First Information Report supported by the statements of the witnesses and findings recorded by the Medical Officer run counter to the hypothesis of denial. Though the formal First Information Report was recorded on 17.8.2021, however, the injured with extensive injuries were medically examined under police dockets on 13.8.2021; according to the provisional medico legal certificates, they had reached hospital on 12.8.2021 at 6:00 p.m. just half an hour after the incident and, thus, delay in formal registration of the case, a phenomena hardly unusual, does not raise eyebrows. Even otherwise, in the absence of any apparent mala fide on part of the complainant or the local police, the petitioner cannot claim extraordinary/equitable concession of pre-arrest bail in a criminal case wherein no less than three persons endured multiple injuries, one being an incised wound on the back of neck with exposed bone. Arguments addressed by the learned counsel, being part of post arrest agenda, cannot be attended at pre-arrest bail stage, certainly not substitute for post arrest bail. The High Court as well as the Court of Sessions, on the assessment of above referred to material, rightly declined judicial protection to the petitioner. Petition fails. Leave declined.”

7. Apparently, the injured has received injuries at the hands of present applicant/accused. The murderous assault draws no anatomical distinction between vital or non-vital parts of human body as once the trigger is pressed and the victim is effectively targeted, intention or knowledge is manifested and the route of a bullet is not controlled by

assailant's option. As such, the case of present applicant/accused is quite different to that of co-accused, who have been admitted to bail by the learned trial Court. It was fortunate of the complainant being saved from loss his life; therefore, no *mala fide* appears in the instant case and no ill will or enmity has been pleaded by the applicant/accused. Prosecution has, *prima facie*, furnished sufficient material to connect the applicant with the commission of offence and PWs have supported the prosecution version, therefore, this is a case where bail cannot be granted to the applicant/accused. Since the specific role has been assigned to the applicant/accused that he has caused injury to the complainant's brother Abbas Ali, hence, he does not deserve for concession of bail. Accordingly, instant criminal bail application is **dismissed** and the interim pre-arrest bail granted earlier vide order dated 05.05.2023 is hereby recalled. The facts and circumstances of the case law cited by learned counsel for the applicant is quite distinguishable with the facts and circumstances of instant case.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE