

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Bail Application No.S-301 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>10.05.2023</u>	<ol style="list-style-type: none"><li>1. For orders on office objections.</li><li>2. For hearing of main case.</li></ol> <p>Mr. MasoodRasool Babar Memon, Advocate for applicant. M/s. PeeralMajeedano and Zaheer Ali Soomro, Advocate for complainant. Mr. ShewakRathore, Deputy Prosecutor General, Sindh. ==</p>

**O R D E R**

**AMJAD ALI SAHITO, J:-**Through the instant criminal bail application, the applicant/accused seeks his pre-arrest bail in Crime No.06 of 2023, registered under sections 324, 337-A(i), 337- F(i), 337-H(ii) and 504 P.P.C, at P.SHala New, after his bail plea was declined by the learned Additional Sessions Judge Matiari, vide order dated 31.03.2023.

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

3. Per learned counsel the applicant / accused is innocent has falsely been implicated in this case in fact he is a complainant of Crime No.47 of 2022 against the complainant party of present Crime No.06 of 2023; that role assigned in the FIR that he has fired from his rifle in order to commit murder of Mst. Kazbano whereas as per medico-legal certificate said lady had received five injuries and such medico-legal certificate was challenged before the Special Medical Board; that due to non-appearance of the injured the medico-legal certificate has been suspended; that applicant is attending the Court he is no more required for further investigation. He has also pleaded malafide on the part of the complainant. He lastly prayed for confirmation of bail.

4. On the other hand, learned counsel for complainant as well as learned Deputy Prosecutor General, Sindh submit that the name of the applicant / accused appear in the FIR with specific role that he has fired from his rifle upon the injured Mst. KazBano resultantly same was hit to her left side of the chest and as per medico-legal certificate the injury was declared under section 337-D P.P.C which is punishable upto ten years. Lastly, they prayed for dismissal of instant criminal bail application on the ground that no malafide has been agitated by the learned counsel for the applicant against the complainant.

5. I have heard learned counsel for the parties having also gone through the material available on record.

6. Admittedly the name of applicant / accused is appeared in the FIR with specific role that on the day of incident the applicant along-with co-accused entered into the house of complainant party wherein the applicant has made straight fire upon Mst. Kazbano which hit her on the left side of her chest and went through and through. After receiving the firearm injury she fell down and subsequently she was shifted to Hospital and as per final medico-legal certificate the injury was declared as 337-D P.P.C which is punishable upto ten years. The ocular

evidence finds support from the medical evidence. The PWs including injured also supported the version of the complainant in their 161 Cr.P.C statements. So far the contention of the learned counsel for the applicant / accused that prior to this the applicant lodged the FIR being Crime No.47 of 2022 and due to that enmity this FIR has been lodged which is a double-edged weapon which cuts both sides. The incident is said to have taken place in broad day light and parties are already known to each other hence there is no case of mistaken identity of the applicant. No malafide or ill-will has been pointed by the learned counsel for applicant/accused on the part of the complainant which is the requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan [2019 S C M R 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

*“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”*

7. At bail stage only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicant with the alleged offence. Resultantly, the applicant/accused failed to make out case for confirmation of interim pre-arrest bail. Consequently, the instant Criminal Bail Application is **dismissed** and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 05.04.2023 is hereby **re-called**.

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 applicants on merits.

JUDGE

Muhammad Danish

