

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-104 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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14.04.2023

Mian Taj Muhammad Keerio, advocate for applicant.
Mr. Aziz Ahmed Laghari advocate for complainant along with
complainant and injured.
Mr. Abdul Waheed Bijarani, APG.

MUHAMMAD IQBAL KALHORO, J.- There is a matrimonial dispute between the parties in this case. On the day of incident viz. 10.05.2022 at 0700 hours applicant party comprising at least three persons duly armed with weapons came in front of shop of complainant situated in Goth Molvi Habibullah Taluka Kot Ghulam Muhammad District Mirpurkhas. No sooner they came than they started abusing complainant party, and when they resisted, they fired upon them injuring PWs Habibullah and Muhammad Wasim. Co-accused Muneer who is said to be in jail is attributed to have fired from his repeater on Habibullah who later on succumbed to his injuries and died. Applicant armed with the repeater is said to have fired on PW Muhammad Wasim who is said to have received at least 10 injuries. Seven out of them are minor in nature 337-F(i) PPC and areailable, whereas three injuries are 337-F(iii) PPC, are non-ailable, and punishable upto three years.

2. Applicant had earlier filed a Criminal Bail Application No.S-657 of 2022 for pre-arrest bail before this court which was dismissed vide order dated 12.09.2022 against which he approached the Supreme Court by filing a Criminal Petition No.1385/2022 but that too was dismissed and ultimately applicant surrendered before the trial court and was taken into custody on 26.11.2022. His attempt for post arrest bail before the trial court has been frustrated by the impugned order dated 07.01.2023.

3. Learned defense counsel has pleaded for post arrest bail on the ground that applicant is not assigned any role of causing any injury to the deceased and keeping in view the nature of injuries, mostlyailable and on lower part of the body of victim, applicability of section 324 PPC in this case is yet to be determined

by the trial court. His arguments have been opposed by learned counsel for complainant and learned Assistant Prosecutor General.

4. I have considered submissions of parties and perused material available on record. There are two accused who have been assigned role of firing at the victims. But, from place of incident, it is stated that only one cartridge was recovered, which has matched with the repeater recovered from main accused namely Muneer Ahmed. From applicant, however no crminating article i.e. repeater was recovered during investigation. He is stated to have made only one fire on PW hitting lower part of his body. Most of the injuries sustained by the injured are bailable except three injuries which although are non-bailable but are punishable upto three years only. In the circumstances, applicability of section 324 PPC in the case of applicant is not without a question. Further, the case has been challaned and apparently the applicant is no more required for further investigation. The sharing of common intention with main accused to do away with deceased Habibullah is a question which can only be determined after recording of the evidence. At this stage when prima facie applicant has not been assigned any role of causing any injury to the deceased, he cannot be saddled with the responsibility of causing death to the deceased. In the circumstances, I am of the view that the applicant has been successful in making out a case for bail. Accordingly, this application is allowed and the applicant is granted post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/ (two lacs) and P.R Bond in the same amount to the satisfaction of learned trial court

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

JUDGE

