

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 255 of 2023

Date	Order with signature of Judge
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1. For orders on MA No. 4736 of 2023
2. For hearing of main case

24.11.2023

Mr. Anwar Zaib advocate for the applicant.
Mr. Talib Ali Memon Assistant PG along with Raja Khalid Mahmood Inspector/IO PS Boat Basin Karachi.
Khawaja Muhammad Azeem advocate alongwith Mr. Mateeullah Gondal advocate for the respondents.

Through this Criminal Miscellaneous Application under Section 497 (5) Cr. P.C. the applicant Amir Khan has assailed the legality of the order dated 06.04.2023 passed by the learned V Additional Sessions Judge Karachi South in Criminal Bail Application No. 960 of 2023, (*re-Tanveer Sharyar & others v The State*) whereby the private respondents were granted post-arrest bail under Section 497 Cr. P.C. in FIR No. 146/2023, registered for offenses under Section 147/148/149/324/34 PPC, Police Station Boat Basin.

2. The accusation against the respondents is on 14.03.2023, they in connivance with their accomplices came to the shop of the applicant with their weapons i.e. iron rods, screwdrivers, and knives, and assaulted him to kill, during the scuffle his cousin Muhammad Ismail and Abdul Qadir received severe injuries, his cousin called 15 Police and where all three respondents were apprehended by the Boat Basin Police and FIR No. 146/2023, was registered against them under Section 147/148/149/324/34 PPC. Their bail plea was admitted by the learned trial Court vide impugned order dated 06.04.2023 on the ground that, it was/is yet to be ascertained which party was the aggressor and aggressed upon.

3. Mr. Anwar Zaib advocate for the applicant learned counsel for the applicant argued that the impugned order does suffer from many illegalities as well as infirmities and, hence, is liable to be set aside. He has further contended that the contents of the FIR are very much clear that the respondents to commit the murder of the applicant party, came with Churri, Iron, Rod Screwdriver, and dandas, and the MLO has examined the injured persons and issued such MLC according to the applicant/accused they have challenged the MLC issued by the MLO but the application does not show that they challenged the MLC of inured Abdul Mutalib, who was seriously injured having an injury of Screwdriver, thus Section 324 PPC very much attracted. The learned

counsel added the respondents caused fatal blows to the injured, which resulted in one of the injured in serious condition who was admitted to hospital for a couple of weeks and still unstable. He further argued that crime weapons were recovered from the possession of the respondents and Pws have supported the version of the complainant in their statements recorded under section 161, Cr.P.C. He submitted that the impugned order is perverse and liable to be set aside. He lastly prayed for allowing the Criminal Miscellaneous Application.

4. Khawaja Muhammad Azeem advocate for the respondents has contended that respondents are innocent and have falsely been implicated in this case with malafide intention due to pressure from the applicant's party. He next contended that the respondents along with their brother Imamuddin and women folk were coming home in a vehicle when they entered into street where a rickshaw was parked, they horned the rickshaw to which the applicant who was sitting in their shop came outside and refrained them from horning and there was exchange of hot words with the applicant and he misbehaved with the respondent's ladies but he picked up with danda and lathis and attacked upon the respondents. He emphasized that the basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise. The principle of law is that every accused is an innocent person until his guilt is proved and it is also a well-settled principle that law is not to be stretched in favor of the prosecution but the benefit of the doubt will go to the accused even at the bail stage. He added that an essential pre-requisite for the grant of bail by sub-section (2) of section 497, Cr. P.C is that the Court must be satisfied based on the opinion expressed by the police or the material placed before it that there were reasonable grounds to believe that the accused was not guilty of an offense punishable with death or imprisonment for life. It is also a well-settled principle that at the stage of bail deep scrutiny of evidence is not permissible nor it is the requirement of law. However, this question cannot be decided in a vacuum and the Court has to look at the material available to arrive at a tentative opinion as to whether the accused is prima facie connected with the commission of the offense or not. He argued that after the grant of bail, respondents have not misused the concession of bail and they are regularly attending the Trial Court. He further submitted that the Medical Certificate issued by the MLO in favor of the applicant party has been suspended by the Medical Board and in the absence of such material bail cannot be refused as the impugned order is sustainable in law. He next argued that considerations for cancellation of bail are quite distinct from the considerations for grant of bail. Once bail has been granted by a competent court of law, strong and exceptional grounds are required for canceling the same. It has to be seen as to

whether an order granting bail is patently illegal, erroneous, factually incorrect, and has resulted in a miscarriage of justice, which is not the case at hand. He lastly prayed for dismissal of the instant Criminal Miscellaneous Application.

5. Mr. Talib Ali Memon Assistant PG has supported the arguments of the learned counsel for the respondents and also opposed the allowing of the instant Criminal Miscellenous Application on the premise that the applicant has suppressed the true facts and attempted to mislead the Court by asserting that the respondents side received injuries by the mob, whereas there was a free fight between the parties on the subject issue and MLO opined injuries received by both the parties, as such there is no illegality in the impugned bail granting order by the trial Court on the aforesaid analogy.

6. I have heard learned counsel for the applicant and the learned APG and have also perused the material available on record.

7. Tentative assessment of the record reflects that the alleged incident took place on 14.03.2023 and was reported on 15.03.2023 at about 0045 hours, the applicant and his witnesses received injuries on their body and were declared as '**Jarrah Jaifah**' The police arrested the accused on 15.03.2023 and recovered the crime weapons, obtained Forensic report of the articles i.e Knife Iron rod wooden stick on 12.04.2023, the statement of the eyewitnesses were also recorded under Section 161 Cr. P.C. and the accused were subsequently challaned. The accused were also referred accused Tanveer Sharyar, Ibrahim Zeeshan, and Bilal were referred to JPMC for medical treatment as they also received injuries on their body during the scuffle, which prima facie show that both the parties received severe injuries in the alleged incident, however the medical certificates obtained by the complainant party was challenged before the Medical Board and the same was suspended by the Medical Board as pointed out by the learned counsel for the respondents. An excerpt of the report of the Medical Board dated 10.06.2023 is reproduced as under:-

“ Please refer to this office letter No. SHK/MED/1120/10470/83 dated 12th May 2023, it is to inform you that the meeting of the Special Medical Board in respect of injured Amir Khan 2023, injured Moosa, MLC No. 2659/2023 dated 14.03.2023, was held in the office of the undersigned on 08.06.2023, injured Amir Khan, injured Abdul Qadir and injured Moosa were not appear before Medical Board, for medical examination also Dr. Talha, Medico-Legal Officer, Medico legal Section JPMC, Karachi did not appear before Medical Board. The opinion/findings of the Medical Board are as under:-

Injured Amir Khan, injured Abdul Qaduir and injured Moosa were not appear before the Medical Board for a third consecutive time (for medical examination). The medico-legal Certificate in respect of injured Amir Khan, MLC No. 2662/2023 dated 14.03.2023, injured Abdul Qadir MLC No. 2660/2023 dated

14.03.2023, injured Moosa, MLC No. 2659/2023 dated 14.03.2023 may be kept in abeyance/suspended and the aforesaid Medico-legal Certificates has lost its legal validity, till the appearance of said injured before the members of the board through proper channel”

8. From the aforesaid factual position of the case coupled with the injuries sustained by both the parties and it is yet to be ascertained, who is the aggressor and aggressed upon, which shall be determined by the learned trial Court, as no opinion can be formed on the subject issue as both the parties raising their voice of concern more particularly the complainant party that the trial Court has erroneously allowed post-arrest bail to the accused without rhyme and reason and grave injustice was done to them. Be that as it may, this point could only be resolved if the injured are examined by the learned trial Court.

9. Primarily, in bail matters, it is the discretion of every Court to grant bail when the offenses do not fall within the prohibition contained in section 497 (1) Cr. P.C., but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under Section 324 PPC. It seems that the punishment for the offense under section 324, P.P.C. is the imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall, in addition to the imprisonment and fine, be liable to the punishment provided for the hurt caused. In principle, the essentials to prove an offense under Section 324 PPC are:

- i) *Nature of the Act: The act attempted should be of such a nature that if not prevented or intercepted, it would lead to the death of the victim.*
- ii) *Intention or knowledge of committing the offense: The intention to kill is needed to be proved clearly beyond a reasonable doubt. To prove this, the prosecution can make use of circumstances like an attack by dangerous weapons on vital body parts of the victim, however, the intention to kill cannot be measured simply by the seriousness of the injury caused to the victim.*
- iii) *Performance or execution of offense: The intention and the knowledge resulting in the attempt to murder by the accused also need to be proved for conviction under the section.*
- iv) *The act by the offender would cause death in its ordinary course.*

10. In the instant case, the complainant party sustained the injuries on 14.03.2023, and the principles as set forth for attracting section 324, P.P.C. is not available and prima facie the intention to kill cannot be measured simply by the seriousness of the injury caused to the victim, which shows the intention of the respondents as to whether they intended to commit murder or otherwise is a function of the learned trial Court,

however, at the same stage, I am cognizant of the fact that the offense under section 324 PPC entails punishment up to 10 years and attracts the stringency of the prohibitory clause of section 497 Cr.P.C. however, the concession of post-arrest bail can be extended to an accused if the reasonable grounds to connect him/her with the commission of a crime are found lacking. In the present case, both the parties have sustained injuries on their bodies. Besides the learned trial Court has observed contrary to the submission made by the learned counsel for the applicant.

11. The contention of the learned counsel for the respondents that the case of the respondents squarely falls within the ambit of section 497(2), Cr.P.C. is concerned, the said provision reveals the intent of the legislature disclosing pre-condition to establishing the word "guilt" against whom an accusation is leveled has to be established based on reasonable ground, however, if there exists any possibility to have a second view of the material available on the record then the case advanced against whom the allegation is leveled is entitled to the relief in the spirit of section 497(2), Cr.P.C. On the aforesaid principle, I am supported by the view of the Supreme Court in the case of *Muhammad Tanveer vs. the State (PLD 2017 S.C. 733)*. However in the present case, both parties have received injuries and it is yet to be ascertained who is the aggressor and aggressed upon, which is possible only if the evidence of injured witnesses is recorded by the trial Court; and, if the other side had not sustained the injuries in the scuffle which took place on the day of the incident, the situation in the present case could have been different.

12. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for canceling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles that apply to setting aside the order of acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

13. For the foregoing reasons, no occasion has been found by this Court for interfering with the lawful exercising of the jurisdiction in the matter of bail by the learned V Additional Sessions Judge Karachi South in Criminal Bail Application No. 960 of 2023.

14. Under the circumstances, the instant Criminal Miscellaneous Application is dismissed as being devoid of merit, along with pending applications. However, it is made clear that if the respondents misuse the concession of post-arrest bail, the learned trial Court shall take prompt action by canceling their bail without reference.

15. These are the reasons for my short order dated 24.11.2023 whereby the captioned Criminal Miscellaneous Application 255 of 2023 was dismissed.

JUDGE