

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 184 of 2023

Date of hearing

Order with signature of Judge

Hearing of bail application

1. For orders on office objection at Flag-A
2. For hearing of bail application

29.01.2024

M/s Qurban Ali Malano and Israr Ahmed Shah, Advocates for the applicant along with applicant.

Mr. Muhammad Rehan Khan Durrani, Advocate for the complainant.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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Muhammad Iqbal Kalhoro, J. – Allegedly, there is a dispute over landed property between the parties. On 22.12.2023 at 04:30 p.m., applicant along with seven (07) other co-accused identified with names in FIR, duly armed with weapons, came in the street where house of complainant is situated and started abusing complainant party, upon which they came out. Seeing them, co-accused Malhar Dharejo instigated others to attack them; hence applicant, armed with a Kalashnikov, fired at brother of complainant, namely Ghulam Rasool, hitting right side of his chest. The other accused made aerial firing, injuring one goat available in the house of complainant. When the witnesses, attracted by fire shots, arrived, the accused decamped. Hence, FIR.

2. Learned defense Counsel has argued that applicant is innocent, has been falsely implicated in this case. There is running enmity between the parties. There is a delay of four (04) days in registration of FIR, which has not been explained. From inspection of place of incident, nothing was recovered, and on 25.01.2023, after more than one month of incident, complainant himself produced empties of different weapons to vouch for the incident. There is a discrepancy in medical certificate and oral account. The medical certificate records time of incident as 07:50 p.m. and arrival of injured as 09:15 p.m., whereas the FIR records the time of incident as 04:30 p.m. First memo of injuries was prepared at 08:00 p.m. on 22.12.2022, which *prima facie* contradicts story of FIR in respect of time. Further, the date of issuance of final Medico

Legal Certificate is not mentioned, and the injury opined in it is ghayr-jaifah hashimah U/S 337-F(v) PPC, punishable for only five (05) years. He has relied upon the cases of Awal Khan and 7 others v. The State through AG-KPK and another (2017 SCMR 538), Kazim Ali and others v. The State and others (2021 SCMR 2086) and Javed Iqbal v. The State through Prosecutor General of Punjab and others (2022 SCMR 1424), in support of his arguments.

3. On the other hand, learned Counsel for the complainant has opposed bail to the applicant/accused citing his specified role, and has relied upon the cases of Ghazan Khan v. Mst. Ameer Shuma and another (2021 SCMR 1157), Haji Shah behram v. The State and others (2021 SCMR 1983) and Aurangzeb v. The State and others (2022 SCMR 1229). Whereas, learned Additional Prosecutor General, citing apparent discrepancies in Provisional Medico Legal Certificates and FIR, has recorded no objection.

4. I have heard the parties, perused material and taken guidance from the case law cited at bar. As far as injury by firearm to the victim referred to in FIR is concerned, it has been confirmed by the Medico Legal Certificate *prima facie*. However, there is a delay of four (04) days in registration of FIR, which, *prima facie*, has not been reasonably explained. The first memo of injuries was prepared on the same date of incident at 08:00 p.m. by the police. It is not clear therefore why FIR was not registered when the police was already in the loop. In such situation, the other facts, qua identity of applicant and his alleged role etc. can only be replied satisfactorily after recording of evidence. Due to delay in FIR and late start of investigation, no other supporting evidence could be collected by the IO. When place of incident was visited by the IO on 26.12.2022, nothing incriminating like empties etc. were found. The evidence of injury to goat and its death was not confirmed either, which has been mentioned by the IO in the memo. 161 CrPC statements of witnesses were also recorded with delay on 03.01.2023 and 28.01.2023 respectively. The apparent discrepancy in Provision Medico Legal Certificate recording different time of incident than the FIR, purportedly on the information given by the complainant, needs to be explained by the prosecution in the trial. More than all the above facts, the punishment of the alleged injury to the victim is only five (05) years, which does not fall under

prohibitory clause of Section 497(i) CrPC. Further, no objection given by learned Additional Prosecutor General to the bail of applicant implying that his custody is not required, would make applicant entitled to the relief.

5. In the circumstances, this application is **allowed**, and ad-interim pre-arrest bail already granted to applicant vide order dated 22.03.2023 is hereby **confirmed** on the same terms and conditions.

6. The observations, as above, are tentative in nature and not meant to affect merits of the case before the trial Court.

The bail application stands **disposed of** in the above terms.

Abdul Basit

J U D G E