

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 1236 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

03.07.2023

Mr. Aijaz Muhammad, Advocate for the applicant
Ms. Rubina Qadir, Addl. P.G.

1. Applicant Amjad Ali son of Abdul Rasheed is seeking bail after arrest in FIR No. 401/2022 lodged under Section 324, 337A(i), 333F(iii) PPC at P.S. Awami Colony, Karachi.
2. The allegation against the applicant/accused is that he with the help of sharp edged knife/sword made blows to the brother of the complainant, whereby, he suffered injuries.
3. Learned counsel for the applicant/accused contended that neither any private witness has been associated to act as witness of the alleged incident nor the victim has been made as a witness who would have been in a better position to describe the incident, therefore, the applicant is entitled for concession of bail.
4. On the other hand, learned Addl. P.G. contended that the applicant/accused is nominated in the FIR and a young man is injured in this incident, therefore, the applicant/accused is not entitled for concession of bail.
5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It is patently clear that the victim of the incident is neither witness

in the instant crime nor any private witness has been associated by the police to describe the alleged incident, however, the complainant who is brother of the victim/injured person was also not available at the place of incident. The prosecution story is only on hearsay evidence which creates a doubt at this stage. The perception and discernment of the expression “further inquiry” is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The *raison d'etre* of setting the law into motion in criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant¹. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted

¹ *Per Muhammad Ali Mazhar J. in Fahad Hussain v. The State (2023 SCMR 364)*

and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

I have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

As a result therefore, this bail application is allowed. Applicant Amjad Ali is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

JUDGE

Aadil Arab