

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.908 of 2023

Date	Order with signature of Judge
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1. For hearing of bail application
2. For order on MA No.8337/2023

07.8.2023

Mr. Mamoon A.K. Shirwany advocate for the applicants alongwith applicants

Mr. Muntazir Mehdi, Additional PG

Mr. Rawas Khan advocate for the surety

Through this criminal bail application, the applicants seek pre-arrest bail in Crime No.49/2023 registered under Sections 289/506/337-A(i) PPC at PS Model Colony Karachi after their bail plea has been declined by learned X-Additional Sessions Judge Karachi East vide order dated 27.4.2023.

2. The accusation against the applicants is that they allowed their pet dog to bite the complainant, in consequence whereof he was severely injured. Such a report of the incident was given to police station Model Colony District Korangi on 13.2.2023 after a delay of about two days.

3. Learned counsel for the applicants has mainly contended that the applicants/accused are innocent and have falsely been implicated in this case by the complainant with mala fide intention and ulterior motives just to pressurize and harass the applicants. The learned counsel contended that the Complainant had distorted the facts and had given false color to the incident. The applicant's dog bite the Complainant by accident and the allegation that he prompted it was false and malicious. He further contended that the applicants could at the most be accused of negligence in handling the animal which attracts section 289 PPC and constitutes a bailable offence. The police had wrongly charged him under sections 337-F(i), 337-F(iii), 34 PPC. He further contended that there is a delay of two days in lodging the FIR, which has not been explained by the complainant; that the applicants and complainant are relatives to each other and there is a dispute of property between them and the complainant has converted the civil/family dispute into the criminal just to pressurize, blackmail and harass the applicants. He next contended that the learned trial Court did not consider the documentary evidence filed by the applicants/accused and passed the impugned order by rejecting their bail in a cursory manner.

4. The complainant is called absent though several notices were issued to him to appear and assist this Court, however, he has chosen to remain absent and in his place learned APG has put forward his submissions and opposed the confirmation of bail to the applicants on the ground that the dispute between the parties is in respect of an immovable property received by the mother of the complainant from her father, however, her property was illegally occupied wherein the complainant received dog bite, thus, the offense under Section 289, 506, 337-A(i) PPC are attracted and there is no mala fide on the part of the complainant to book the applicants in the case. The learned APG contended that the applicants intentionally set the dog on the Complainant and it was neither an accident nor negligence on their part. They had used the dog as a weapon of offense and wounded the Complainant and were liable to be prosecuted under sections 337-A(i) PPC rather than under section 289 PPC. He added that in the instant case, there is a specific allegation against the applicants that they sicced his dog on the Complainant which caused injury to his body. PWs have got their statements recorded under section 161 Cr.P.C. in support of the prosecution case and, according to them, the incident was not an accident. Medical evidence corroborates the ocular account and the doctor has declared the injuries sustained by the complainant which attract the aforesaid sections. The offense under the last-mentioned provision is non-bailable. He argued that there is also previous rivalry between the accused and the Complainant, section 289 PPC does not apply. 'Negligence' which is the foundational element for this provision is missing. He prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. It is by now well settled that a seemingly innocuous thing may become dangerous when under the circumstances, in which it is used or threatened to be used, causes death or other serious physical injury or is readily capable of causing it. The circumstances of a weapon's use include the intent and ability of the user, the degree of force, the part of the body to which it was applied, and the actual injuries that were inflicted. The Penal Codes in most jurisdictions do not contain specific provisions to cater to the situations in which a canine is used to attack or threaten a human or to commit a crime but the courts do recognize it as a weapon of offense. A dog trained to attack humans on command, or one without training that follows such a command, and which is of sufficient size and strength relative to its victim to inflict death or great bodily injury, may be

considered a ‘deadly weapon or instrument. In the Pakistan Penal Code, 1860 (“PPC”), section 289 stipulates:

“289. Negligent conduct with respect to animal. — Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to [three thousand rupees], or with both

7. There is no cavil to the proposition that under the aforesaid law, criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public generally or to an individual in particular which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. In the present matter, there appears to be a civil dispute between the parties and the complainant lodged the FIR on 13.2.2023 when the alleged offense occurred on 11.2.2023, which is delayed about two days. The allegations against the applicants are that they sicced their pet dog on the Complainant which injured him. However, the doctor has not declared the alleged injury sustained by the complainant as Ghyr Jaifah Damiyhah and/or Ghyr Jaifah Mutalahimah which could attract section 337-F(i) and 337-F(iii) PPC. The offense under section 289 is bailable, whereas section 337-A(i) PPC is Sharjah-i-khalifa punishable up to two years as ta'zir, is also bailable and their ingredients are yet to be determined in the light of the prosecution version including the gravity of the offenses, conduct and role ascribed to the applicants, mode, and manner of the crime and the defense version.

8. The applicants have particularly contended that the civil dispute has been converted into a criminal one and to see whether the complainant has received the dog bite or received simply injury which factum needs to be looked into by the trial Court in terms of medical evidence, if any, available with the prosecution, thus the mala fide intention on the part of the complainant cannot be ruled out at this stage.

9. This Court is conscious of the fact that the concept of pre-arrest bail is an extra-ordinary relief, which is limited to rare cases based upon trumped-up charges rather it has to be extended sparingly and to avail such relief of Extra-ordinary, it is obligatory to establish that the prosecution has been launched, which is based upon malafides, ulterior motives and if

it is materialized, it would certainly cause irreparable loss to his reputation.

10. The Supreme Court in the recent judgment has held that such practice to grant ad-interim bail is an extension of such a remedy to act as a shield to protect innocent persons facing the highhandedness of individuals or authority against frivolous litigation. The rationale to grant ad-interim bail is synonymous with passing a prohibitory injunction; however, the concept of ad-interim bail is more precious as compared to the prohibitory injunction. In the former, the liberty of the person is involved whereas in the latter, only propriety rights are in question. The status of the accused becomes “custodia legis” during the period when ad-interim bail is granted till its final adjudication subject to furnishing of sureties to the satisfaction of the Court.

11. The provision of Sec.497(2) Cr. P.C confers powers upon the Court to grant bail during the investigation, inquiry, or trial subject to an opinion formed by the Court that material placed before it is not sufficient to establish guilt and it still requires further inquiry into his guilt whereas Section 498 Cr. P.C deals with two situations:-

- i) *The fixation of the amount or bond according to the circumstances;*
- Conferment of powers to grant bail to a person who is not in custody;*

12. In view of the above facts and circumstances of the case coupled with the factum of mala fide intention and ulterior motive on the part of the complainant and keeping in view the nature of the offense the bail plea of the applicants is accepted and their bail is hereby confirmed in terms of order dated 28.4.2023, however, they are required to furnish fresh surety in the sum of Rs.50,000/- (Rupees fifty thousand only) each and PR bond in the like amount to the satisfaction of the Nazir of this Court within two days on the premise that the surety has come forward for withdrawal of his surety bond.

13. It is made clear that if the applicants/accused misuse the concession of bail, the learned trial Court would be at liberty to take appropriate action.

14. This criminal bail application stands disposed of.

JUDGE