

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1535 of 2023

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| Date | Order with signature of Judge |
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For hearing of bail application

04.09.2023

Mr. Zamir Ahmed Kalhoro advocate for the applicant
Mr. Muntazir Mehdi Addl. PG a/w ASI Kashif Khan of P.S Manghopir,
Karachi

Through this bail application under Section 498 Cr.P.C., the applicants Abdul Nabi and Alam Khan have sought admission to pre-arrest bail in F.I.R No.347/2023, registered under Section 324/34 PPC at Police Station Manghopir, Karachi. The earlier bail plea of the applicants has been declined by the learned XIth Additional Session Judge Karachi (West) vide order dated 14.07.2023 in Criminal Bail Application No.2479/2023.

2. Accusation against the applicants is that they in connivance with each other fired upon the complainant, who sustained a bullet injury on his right leg, however, the applicants fled away from the place of the incident by leaving their motorcycle at the spot, thereafter the complainant was shifted to Abbasi Shaheed Hospital for treatment, such report of the incident was given to the Police Station Manghopir on 27.05.2023, who registered the F.I.R No.347/2023, under Section 324/34 PPC against the applicants.

3. It is inter-alia contended that the applicants are innocent and have falsely been implicated in this case. The learned counsel submitted that the alleged motorcycle was not recovered. He has further contended that the Section 324 PPC mentioned in the FIR is not attracted according to the facts mentioned in the FIR. He has further argued that no bullet empty or any blood-stained dust was recovered from the place of the incident even no recovery of the alleged crime weapon has been effected. Learned counsel further submitted that the subject FIR has been lodged with malafide intention and ulterior motive on the part of the complainant and police. He pointed out that in the FIR alleged motorcycle was left at the place of the incident however the same has not been recovered as per mushirnama place of incident. He lastly prayed for allowing the bail application.

4. The Investigation officer present in Court has submitted that notice was served upon the complainant in terms of orders dated 09.08.2023 and 24.08.2023 passed by this Court and the complainant ensured to be present in Court along with his counsel and such entry has been made in the police diary on 03.09.2023. however today he is called absent and the learned Addl. PG has opposed the bail application and states that the learned trial Court has rightly dismissed the bail plea of the applicants and the applicants do not deserve the concession of pre-arrest bail as a direct role has been assigned to the applicant Ghulam Nabi. He added that the accusation against the applicants is well founded, and the prayer of the applicants for the grant of pre-arrest bail is liable to be dismissed for the reason that no malafide has been substantiated by the applicants. He prayed for the dismissal of the bail application.

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

6. Tentative assessment of the record reflects that the alleged incident took place on 27.05.2023 and was reported on the same day, though the complainant has shown a direct role in the applicant Ghulam Nabi who allegedly fired upon him which hit his right leg, however during investigation police failed to recover the crime weapon from the applicant and /or failed to recover crime empty from the place of incident and the MLO vide report dated 27.05.2023 opined the injury as Jurh Ghayr-jaifah Munaqila, however, in the case in hand the applicants have been charged with Section 324 PPC. Prima facie the investigating officer has failed to recover the alleged empty of bullet fired upon the pistol which hit the complainant on his right leg and even the alleged motorcycle which was left at the place of the incident was also not recovered, which shows that intention of the complainant and the investigating officer who has made defective investigation and in such circumstances benefit of doubt goes to the accused at the bail stage.

7. 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 is also needed to be proved for conviction under the section.*
- iv) *The act by the offender would cause death in its ordinary course.*

8. In the instant case, the complainant has sustained injury on his non-vital part of the body and the exceptions provided in the aforesaid principles which is the main ingredient of section 324, P.P.C.; and prima facie the intention to kill cannot be measured simply by the seriousness of the injury caused to the victim, as the applicants have not repeated the alleged fire upon the victim which shows the intention of the applicants as to whether they intended to commit murder or otherwise which requires further probe to their guilt which 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 with the commission of a crime are found lacking, however, in absence of a corroborative piece of evidence i.e. crime empty and/or crime weapon and motorcycle needs to be thrashed out by the trial Court. Moreover, no empty has been secured from the place of the incident, and without matching with crime weapon which has not been secured creates doubt in the prosecution story. In principle, the provision of Section 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.

9. The contention of the learned counsel that the case of the applicants 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 for 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 in case of Muhammad Tanveer vs. the State (PLD 2017 S.C. 733).

10. In view of the above discussion, learned counsel for the applicant/accused has made out a prima-facie case for confirmation of bail, hence interim pre-arrest bail already granted to the applicants/accused Abdul Nabi and Alam Khan vide order dated 17.07.2023 is hereby confirmed subject to their furnishing additional surety of Rs.100,000/- (Rupees one hundred thousand only) each and PR bond in the like amount to the satisfaction of the Nazir of this Court . The learned trial Court is directed to examine the complainant within one month and if the charge is not framed the same shall be framed on the next date of hearing.

11. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

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

JUDGE

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