

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail No. 1185 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

05.09.2023

Ch. Muhammad Saeed-uz-Zaman advocate for the applicant assisted by Mr. Saleem Nawaz Waziri advocate
Mr. Waqas Ali Chaudhary advocate for the complainant.
Ms. Rubina Qadir, Deputy PG

Through the instant bail application, the applicant has approached this Court for pre-arrest bail in FIR No. 59/2023 registered for offenses under Section 324 PPC of P.S Baldia Karachi.

2. The accusation against the applicant as per FIR No. 59/2023 is that he gave a dagger blow to the victim/complainant namely Syed Misbahuddin in his chest; during such a scuffle, the crime weapon was allegedly snatched from the applicant and handed over to Baldia police Karachi by lodging the FIR No.59/2023 for the offense under Section 324 PPC. However, during the investigation and after obtaining a Medical Certificate from the MLO, Section 337-D PPC was added to the charge sheet.

3. Chaudhary Muhammad Saeed-uz-Zaman, learned counsel for the applicant has submitted that the applicant /accused is innocent and has falsely been implicated in this case. He next argued that the applicant is a minor aged about 17 years and his case falls under the Juvenile Justice System Act, 2018, therefore he is entitled to the concession of bail. He has further submitted that due to a family dispute, the complainant involved the present applicant in the above case and lodged the false FIR against the applicant with malafide intention; that there is no eye witness of the alleged incident as such the case is fit for further inquiry. Per learned counsel, the applicant has a prima facie case to be released on pre-arrest bail. On the premise that the co-accused have already been released on post-arrest bail vide order dated 31.05.2023 as a rule of consistency is applicable in the present case. Learned counsel further submitted that no recovery has been effected from the applicant and FIR is delayed about one month; besides the offense under Section 324 PPC is not attracted in the case of the present applicant. He next argued that there is no evidence at all against the applicant and he has joined the investigation after obtaining bail from this Court. He prayed for confirmation of bail earlier granted by this Court vide order 05.06.2023

4. Ms. Rubina Qadir, Deputy PG assisted by Mr. Waqas Ali Chaudhary learned counsel for the complainant has opposed the bail plea of the applicant and submitted that the accused is not able to demonstrate any malafides in lodging the FIR nor is his arrest being sought with ulterior motives, which remains the

primary test for the grant of pre-arrest bail. Learned Assistant PG submitted that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations, to protect the innocent person against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or an alternative to post-arrest bail. Learned counsel for the complainant has submitted that the applicant is not juvenile under the law and there is a direct and specific role assigned to him of causing grievous injury to the complainant on his chest. He further submitted that the rule of consistency is not applicable in the present case on the premise that the role assigned to the applicant is different than the co-accused who also participated and assisted the applicant in the crime. He referred to the Medical Certificate and submitted that the offense under Section 337-D PPC is punishable by up to 10 years whereas the offense under Section 324 falls within the prohibition contained in Section 497(1) Cr.P.C. He lastly prayed for the dismissal of the bail application.

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

6. Tentative assessment of the record reflects the following aspects of the case:-

- a) *The alleged offense occurred on 24.03.2023 and was reported on 28.04.2023 after a delay of about one month.*
- b) *The allegations against the applicant are that he caused a dagger injury on the left side of the chest of the complainant.*
- c) *During the scuffle PWs received injuries in their hands while snatching the dagger from the applicant who later fled from the place of the incident.*
- d) *The MLO opined the injury of the complainant as Jarrah-e-Jaifa, punishable under section 337-D PPC, and the same Section was added to the charge sheet. Medical evidence supports the prosecution story to the effect that MLO found an incised wound injury 4 CM x 2 CM over the left upper chest injury deep.*
- e) *Injury caused to the complainant on his vital part i.e. chest and cold have been fatal, however, he sustained the injury.*
- f) *The FIR was lodged under Sections 324/34 PPC and Section 337-D PPC was added to the charge sheet. The offenses fall within the prohibitory clause of Section 497(1) Cr.P.C.*
- g) *The crime weapon was produced vide memo of the place of incident and recovery dated 29.04.2023.*
- h) *Co-accused Masoom Khan and Muhammad Aleem have been granted bail after arrest by the trial Court vide order dated 31.05.2023 passed in Bail after arrest application No.2447/2023.*
- i) *PWs have supported the case of the complainant in 161 Cr. P.C statements.*
- j) *The question of the age factor of the applicant shall be decided by the learned trial Court after receiving the medical report.*

7. It reflects from the record that the applicant has been nominated in the F.I.R. with the specific role of causing a dagger blow injury to the complainant, hitting his vital part of the body i.e. Chest. A murderous assault as defined in Section 324 P.P.C draws no anatomical distinction between vital or non-vital parts of the human body; once the victim is effectively targeted, with “*intention or knowledge*” as contemplated by Section 324 P.P.C is sufficient to attract the subject provision. This brings the case of the applicant *prima facie* within the spirit of Section 324 and 337-D of the P.P.C, hit by statutory prohibition contained in Section 497(1) Cr.P.C. Moreover, during the investigation, the Investigating officer also collected sufficient incriminating material to connect the applicant with the alleged crime and it is for the trial Court to see pro and contra of the case; that injury assigned to the applicant finds support from a medical certificate issued by the MLO and there is also recovery of crime weapon i.e. dagger as per *mashirnama* of the place of incident and recovery. The version of the complainant also gets support from 161 Cr. P.C. statements of prosecution witnesses. So far as the grounds raised by the learned counsel for the applicant are concerned, suffice it to say that in pre-arrest bail matters only tentative assessment is to be made, more particularly, malafide and ulterior motive is to be looked into as such the deliberation on the aforesaid grounds is not required.

8. In law the considerations for pre-arrest bail are different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is the duty of the accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before the arrest is meant to protect innocent citizens who have been involved in heinous offenses with malafide and ulterior motives. In the present case, the aforementioned exceptions are missing; therefore this court cannot thwart the investigation process by enlarging the applicant on pre-arrest bail for an indefinite period.

9. In the present case, tentatively, all the aforesaid factors, at this stage, disentitling to the applicant for the concession of discretionary relief of bail in terms of Section 498 Cr. P.C. Accordingly, the instant bail application stands dismissed, and interim bail granted to the applicant vide order dated 05.06.2023 is recalled.

10. Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case and /or any other proceedings.

JUDGE