

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1690 of 2023**

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

For hearing of bail application

19.09.2023

Mr. Muhammad Zeeshan Abdullah advocate for the applicant alongwith applicants.

Khawaja Muhammad Azeem advocate for complainant along with complainant.

Mr. Talib Ali Memon Assistant PG.

The applicants seek indulgence of this Court against an order dated 25.07.2023 of Additional Sessions Judge VI (Malir) Karachi whereby the trial court while dismissing the bail application of the applicants has denied to them the pre-arrest bail in FIR No. 326/2023 registered for offenses under Section 452, 324,506-B, 337F (i), 34 PPC, of P.S Malir Cantt Karachi.

2. The charge against the applicants is that on 05.05.2023, they in connivance with their accomplices forcibly entered the house of the complainant and on his resistance, the applicant snatched Repeater gun from the Guard and opened fire upon the complainant with the intention to kill which was hit on his right leg shank, and also caused injuries to PWS Rameez and Pavez. However, with their hue and cry many people gathered there, seeing the situation the applicants fled away from the place of the incident by extending threats of dire consequences. The complainant reported the incident to the police and succeeded in obtaining a letter for medical treatment, consequently, FIR No. 326/2023 for the offenses under Section 452/324/506/337-F(i) PPC was registered on 7.7.2023.

3. Learned counsel for the applicants has attempted to give a brief history of the case by narrating the facts that on 05.05.2023, one Niaz Muhammad @ Niazi along with Parvez and other 35 to 40 wranglers entered in Saharanpur Cooperative Housing Society situated at Survey Nos. 72, 78, and 224, Deh Safoora, tappo Songal, Taluka & District, Karachi, and gathered at the residence of the Applicant No. 1. Niaz Muhammad & others started shouting and chanting slogans against Applicant No. 1, who was/is the Honorary Secretary of the Society. Per learned counsel, Niaz Muhammad along with others injured one of the Masons of the Society namely, Zafar, who got a head injury. On the said incident, applicants called 15 and area Police and on their arrival, the culprits went away. The learned counsel further submitted that there was a dispute between the parties over two plots No. C-62 and C-62-A. Learned counsel added

that in such scuffle one Zafar was injured who approached the concerned Police Station where a letter for a medical checkup was issued to him, vide Entry No 2/36 dated 05.05.2023 at about 22:45 According to that medical of Mr. Zafar conducted at JPMC, where he was examined and, as per the observation of ML Report No 4717/2023 dated 06.05.2023, he sustained an injury in his head being injury "Shajjah-1-Khalifah. Learned counsel pointed out that the applicants were surprised rather shocked when they came to know that on 06.05.2023 at about 00:45 the Complainant also approached to concerned police and obtained a letter for a medical checkup on the allegation that due to a quarrel with the Applicants at the Society, his, allegedly, bone of left leg was broken and Rameez and Parvez also had got a head injury. Learned counsel emphasized that in the said Report, seeking medical examination, the Complainant did not state any incident of fire with a weapon by Applicant No.1. learned counsel further argued that the applicants are innocent and have falsely been implicated in the case; that there is a delay of two months in the lodgment of the FIR, which has not been explained by the prosecution; that the complainant has made self-inflicted injuries to rope the applicants/accused in this false case; per learned counsel, the story narrated in the FIR is false and self-made which also clearly appears from the report lodged by the complainant for medical treatment letter where he failed to disclose about the alleged firearm injury; that the alleged offenses do not fall within the prohibitory clause, hence it requires further probe. He also contended that I.O after conducting an investigation recommended the case to be disposed of under B-class and such summary Report under Section 173 Cr. P.C was submitted before the learned trial Court for orders, therefore this a case of two versions, one put forwarded by the complainant and second by the police, in such circumstances, malafide of the complainant cannot be ruled out. He prayed for confirmation of interim pre-arrest bail already granted to the applicants.

4. The learned counsel for the complainant has opposed the bail plea of the applicants and submitted that the applicants/accused are not able to demonstrate any malafides in lodging the FIR nor is their 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 pre-arrest bail. He next argued that the applicants have been specifically nominated in the subject crime with a specific role of firing at the complainant and causing injuries to PWs. Per learned counsel, the version of the complainant party is supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence and recoveries of the alleged

weapons of offense are yet to be effected as such no extraordinary circumstances are available to thwart the investigation process. On the point of the defense version, as pleaded by the accused, is concerned, he submitted that this Court is not to make a probe into the defense version to advance a plea of bail, rather it has to assess tentatively the material produced before it and to see if reasonable ground exists to believe, prima facie involvement of accused in the commission of the offence and if the accused found connected with the commission of the offence, he will not be released on bail based on further inquiry. Learned counsel emphasized that the offense under section 324, P.P.C. is prima facie attracted to the present case; hence, the alleged offense falls within the prohibitory clause of section 497 Cr.P.C. As such, prima facie sufficient material is available with the prosecution to connect the accused with the commission of the alleged offense; and the grounds of malice and ulterior motive are hardly available to the accused, therefore, they do not deserve any leniency from this Court. on the ground of the report of the investigating officer disposing of the case under B Class, he argued that the magistrate has not yet approved the report filed under Section 173 Cr. P.C as such this ground is not available with the accused at this stage, even otherwise the opinion of police is not binding upon the Court. He prayed for the dismissal of the bail application.

5. Learned Assistant P.G. has adopted the arguments of the learned counsel for the complainant and submitted that the learned trial Court has rightly dismissed the bail plea of the applicants. It has been contended that it is a settled principle of law that in such cases the statement of the victim itself is sufficient for proving the charge against the accused. Therefore, they do not deserve any leniency by this Court.

6. I have heard the learned Counsel for the Applicants, learned A.P.G for the state as well as learned Counsel representing the Complainant, and perused the material available on record and case law cited at the Bar.

7. It is now well settled that while granting extraordinary relief of pre-arrest bail, the merits of the case can be touched upon in terms of the ratio of the judgment of the Supreme Court in the cases of *Javed Iqbal Vs. The State* **2022 SCMR 1424** and *Miran Bux v. The State* (PLD 1989 SC 347). However, the law of bail under Section 497 Cr. P.C, wherein it is provided that a person shall not be released on bail if there appear to be reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years, though all the offenses do not fall within the prohibition contained in Section 497 Cr. P.C, however in pre-arrest bail this Court is only required to see the ulterior motives and malafide of the complainant and

police and will also tentatively assess the material and can also touch the merits of the case so far as the allegations contained in the F.I.R, nature of injuries, medical evidence if available and statement of PWs and other material points available on the police file. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offense and if the answer is in the affirmative he/she is not entitled to grant even post and/or pre-arrest bail.

8. Before deciding the pre-arrest bail on merit, which is based on two versions one forwarded by the complainant and the second by the investigating officer under B-class. However, I am cognizant of the fact that, while deciding a Bail Application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C. nature and gravity of the charge, other incriminating material against the accused, legal pleas raised by the accused and relevant law have to be considered. I am also well aware of the fact that the grant of pre-arrest Bail is an extraordinary relief that is extended in exceptional circumstances when glaring malafide is shown on the part of the prosecution to cause unjustified harassment and humiliation of a person in case of his arrest.

9. The tentative assessment of the record reveals the following position of the case;-

a) the alleged incident took place on 5.5.2023 and was reported to the concerned police on 7.7.2023.

b) The complainant moved an application to the SHO for registration of the FIR on 15.06.2023 and applied Section 22-A Cr. P.C before the justice of peace and report was called from the SHO who submitted his report to the Court on 06.07.2023 with the narration that on 5.5.2023 medical letter was issued to the injured namely Malik Zafar for treatment on the premise that during the alleged fight between injured and Ali Niazi and Sajjad he sustained head injuries however on second-day complainant and PWs appeared before the police station for medical treatment with the assertion that during fight with the applicants and others at house No. C-62 Sharnpur Society sustained injuries. The SHO further intimated to the Court that he was informed that the complainant received a gunshot injury and passed away however no gunshot injury was mentioned by the injured person when he reported to the police station to obtain the medical letter, however, both parties intended not to take action against each other. SHO further reported that neither the signs of any demolition were evident nor the occurrence of any gunshot/firing was confirmed. He further submitted that the nature of the injury allegedly received by the complainant is Jerah Ghair Jafya Damyah which is non-cognizable. The SHO further reported that Niaz Muhammad Khan and his brother are habitual offenders and so many cases are registered against them.

c) The MLC of injured Zafar shows the nature of the injury as Shuja-e-Khafifa, MLC of the complainant shows Jerah Ghair Jaifa Damyah.

d) Applicant Syed Mazhar Ali Shah has started litigation by filing constitution petition No. 8082/2019 before this Court for holding the general election of M/s Sharanpur Cooperative Housing Society Ltd. and litigating is reported to be pending at different forums.

e) the statement has been filed on behalf of the applicants with the narration that the investigating officer has submitted final report No. 237/2023 under Section 173 Cr. P. C before the learned Magistrate wherein it is concluded that during investigation the case registered against the applicants is found to be false and frivolous and recommended for disposal of the case under class B for approval wherein the learned Magistrate has called complainant vide order dated 12.08.2023.

10. It has also come on record during the investigation that neither the applicants have caused any injury to the complainant or injured PWs nor they were present at the spot. Although the opinion of the police is not binding on the Courts of law, the same can be taken into consideration while deciding bail application, therefore, by keeping in view the contents of the FIR and the outcome of the investigation, prima facie the case of prosecution to the extent of applicants has become a case of two versions i.e. one put forward by the complainant and the other came on record during investigation and which version is correct shall be determined by the learned trial court after recording evidence. Reliance can easily be placed upon the case of *Ehsan Ullah v. The State* 2012 SCMR 1137. During the investigation, nothing was recovered from the present applicants.

11. Adverting to the question of applicability of 337F (i), PPC is concerned, according to Section 337, PPC, six genres of “Shajjah” (injuries) have been depicted such as:

- (a) Shajjah-i-Khafifah;
- (b) Shajjah-i-mudihah;
- (c) Shajjah-i-hashimah;
- (d) Shajjah-i-munaqillah);
- (e) Shajjah-i-ammah; and
- (f) Shajjah-i-damihah.

12. The Supreme Court in similar circumstances has dealt with the issue involved in the present case. In the case at hand, the applicants have been charged with Section 337-F(i) i.e. Jurh Ghayrjaifah damihah. The punishment of Section 337-F(i) is arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term that may extend to five years as ta’zir.

13. As far as section 324 PPC is concerned, in an attempt to murder case falling within the ambit of section 324, P.P.C., the nature of the act done, the intention of the offender and the circumstances leading to the occurrence are

the essential ingredients, which need to be probed into to determine the guilt or otherwise of an accused. In the present case, the allegations of an attempt to kill have been discarded by the investigating officer in his report under section 173 Cr.P.C. by disposing of the case under B Class, keeping in view the facts and circumstances of the present case, the possibility of false implication to gain benefits in the civil litigation cannot be ruled out. It is a settled law that the liberty of a person is a precious right; which has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973, and the same cannot be taken away on bald allegations. In these circumstances, the applicants have made out a case for bail as their case squarely falls within the purview of section 498, Cr.P.C. based on malafide intentions entitling for further inquiry into their guilt.

14. As far as section 506-B PPC is concerned the same provides the punishment for criminal intimidation to the extent of two years, however, if the death threat is issued to any person, the punishment may extend to seven years and then it becomes a non-bailable offense. The ‘criminal intimidation’ has been defined in Section 503 PPC in the following words:-

“503. Criminal Intimidation: Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

15. A bare perusal of the afore-quoted provision of law makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) PPC would not be applicable and the only provision which will remain in the field is the overt act, which is committed in consequence of criminal intimidation. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Rana Muhammad Imran Nasarullah Vs. The State **2022 SCMR 1946**.

16. As far as the delayed registration of FIR is concerned, the prima facie record shows that deliberations and consultation on the part of the complainant have been made as the alleged offense occurred on 05.05.2023 and was reported to police on 7.7.2023.

17. According to the Medico-Legal Report of the injured PWs, the injuries on their person have been declared as Jurh Ghayr-jaifah damihah falling within the ambit of Section 337-F(i) PPC for which the punishment of Section 337-F(i) is arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term that may extend to five years as

ta'zir. However, I do not want to comment on this aspect of the matter, lest it may prejudice the case of either of the parties before the Trial Court if proceeded on merit. It is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the applicants and as to whether Sections 337-F(i), 324 PPC is applicable or not.

18. It is well settled by now that it is not possible in each case to prove the malafide but the same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post-arrest bail then merely at the wish of the complainant, he/she cannot be sent behind bars for a few days by dismissing his/her application for pre-arrest bail. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Khalil Ahmed Soomro vs. The State* **PLD 2017 SC 730**.

19. In view of the above tentative assessment, prima-facie not only there is an inordinate delay in lodging the FIR but the subsequent events highlighted above wherein the claim of the parties on the subject plots of the Society is also under adjudication, based on documentary evidence; therefore, at this stage, the element of malice and malafide on the part of the complainant cannot be ruled out as his prima-facie intent is to obtain possession of the subject plots which is not the function of this court however it is for the parties to take resort of civil proceedings, these all factums makes the case of the applicants to be one wherein the exercise of extraordinary discretion of pre-arrest bail would be just to meet the ends of justice, particularly, when the circumstances warrant further inquiry and the fact that the alleged offenses do not fall within the ambit of prohibitory clause of section 497 Cr. P.C wherein grant of bail is a rule and refusal is an exception. Reliance is placed on the cases of *Muhammad Ramzan alias Jani Vs. The State and others* (2020 SCMR 717).

20. The essence of the above discussion is that the applicants have succeeded in making the case for the confirmation of the pre-arrest bail, hence, this bail application is allowed and the ad-interim pre-arrest bail already granted to the applicants vide order dated 01.08.2023 is confirmed subject to their furnishing of fresh surety bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) each with P.R bond in the like amount each to the satisfaction of the Nazir of this Court.

21. Needless to mention any observations made in the above order are tentative and shall not influence the trial court in any manner.

JUDGE

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