

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1422 of 2023

Date	Order with signature of Judge
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For hearing of bail application

12.7.2023

Mr. Wasique Ahmed Kehar. advocate alongwith Mr. Zameer Ahnied Bhutto, advocate for the applicant
Mr. Siraj Ali Khan, Additional PG

Through this bail application, the applicant Owais son of Abdullah Khan seeks post-arrest in Crime No.206/2023, registered under Section 23(1) A of SAA PS Landhi. Applicant earlier filed Bail Application in Sessions Case No.1502/2023, which was dismissed by the learned XHI-Additional Sessions Judge Karachi East vide order dated 21.06.2023.

2. Brief facts of the case are. that on 08.04.2023 at about 0155 hours party of PS Landhi headed by AS1 Mushtaque Ahmed apprehended the applicant / accused from Market Landhi No.89, Karachi, near Abdullah shop Karachi and secured a 9MM pistol bearing No.ACL344381 load magazine with 03 live rounds frotn the possession of the present applicant / accused. On-demand accused failed to produce the license of the said pistol. He was arrested for an offense punishable under Section 23(11(a) SAA, 2013, and FIR. was registered against the applicant / accused.

3. Mr. Wasique Ahmed Kehar learned counsel for the applicant has argued that the applicant has not been nominated as the culprit who allegedly fired upon the police. He next argued that the police just has shown efficiency to the effect that they arrested the culprit, though they failed to catch the actual assailant. He next argued that the complainant has admitted in the F.I.R. a bullet came from an unknown side that hits the left leg of PC Soomar and the people ran away towards the narrow street. It is contended by learned counsel that the crime report suffers from unexplained delay; that the applicant has nothing to do with the crime in question and his implication in the case is based on a concocted story of crime; that even otherwise, the applicant did not inflict injuries on the left leg of the victim and this fact alone excludes the applicability of section 24 PPC; that even according to medical reports, injuries are in the

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simple nature which entails maximum punishment upto seven years thus does not attract the prohibitory clause of section 497 Cr. P', and that nothing as such was recovered from the applicant. The alleged weapon has been foisted upon the applicant. Learned counsel pointed out that the alleged pistol bearing No.ACL-34438I was allegedly recovered from accused Saad Khan, however, the said pistol has been shown to have been recovered from the applicant in FIR No.206/2023, which shows malaide intention on the part of the prosecution. With these submissions learned counsel urged that the applicant is entitled to post-arrest bail.

4. Learned APG has opposed the bail plea of the applicant on the ground that the offense of attempt to murder is considered almost as serious as committing murder, however, the only dissimilarity that exists between the two is the fact that murder takes place where the act of the accused has caused the death of the victim, whereas. attempt to murder is a failed attempt to cause the death of the victim. He further argued that the crime weapon has been recovered from the applicant thus he has rightly been booked in the aforesaid crime.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. From the perusal of the record, it reflects that applicant is not alleged to have even attempted to cause any injury to PC Soomar his culpability in the alleged crime certainly calls for further probe as it would be decided by the learned trial court after the recording of evidence during the trial, entitling him for the relief sought for. Prima facie, it appears from the record that the police has just arrested the applicant *for* having a pistol 9 MM with a loaded magazine 3 round wiring dark silver bearing body No.544831 ACL and in English 39X19 TAURUS, however, in FIR No.206/2023 the pistol 9MM No. ACL-344831 has been shown to have been recovered from the applicant. Prima-facie, there is a difference between the description of the alleged 9MM pistol number in Mushirnama of arrest and recovery as well as FIR, which requires further inquiry.

7. The next question whether the applicant has used the alleged weapon or otherwise, the FSL report is silent in this regard which factum, at this juncture, requires further inquiry into the guilt of the applicant.

8. The grant of instant post-arrest bail is mainly urged because the alleged injuries received by the PC-Soomar in FIR No.2052023 of PS

Landhi under Section 147, 148, 149, 353, 324, 186 and 34PPC' are on the non-vital organ of the victim giving rise to the reasonable ground of suspicion thus offense under Section 23(1)(a) Sindh Arms Act not attracting the prohibitory clause of section 497 Cr.P.C.

9. Though the offense under section 23(1)(a) Sindh Arms Act entails punishment of upto 14 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 from the record. In the above backdrop, prima-facie applicant has not been assigned the role of firing from the alleged pistol upon PC Soomar, besides. there is a contradiction in the description of the number of 9MM Pistol and Mushirnama of arrest and recovery as well as FIR. Prima-facie, sufficient material has not been collected to connect the applicant with the commission of the crime, rendering him entitled to the concession of post-arrest bail.

10. In view of the above, the Applicant has made out a case of post-arrest bail in the aforesaid crime at this stage.

11. These are the reasons for my short order dated 12.07.2023 whereby I have allowed the instant bail application and admitted the applicant to post-arrest bail in the aforesaid crime No.20⁶/₂023 under Section 23(1)(a) of Sindh Arms Act of Police Station Landhi subject to furnishing his surety in the sum of Rs.50,000/-(Fifty thousand only) and PR Bond in the like amount to the satisfaction of the trial court.

12. The above findings are tentative and shall not prejudice the case of either party during the trial.

13. These are the reason for my short order dated 12.07.2023 whereby the bail plea of the applicant was accepted.

JUDGE