

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1421 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 complainant namely ASI Mushtaque Ahmed of P.S Landhi has lodged the FIR that along with PC Soomar, PC Shahid were patrolling by police mobile-II in different areas for the eradication of crime and one message of 15 received , as per information, in area 89 Market Landhi Karachi East severe fight occureed in two groups in which few people got injured the complainant ASI after receiving such information directed commander HC Abdul Rehman through phone mobile to reach at place of incident immediately and along with the police personnel one mobile-II directly reached at 13.55 so 8-10 unknown persons were present at the place of incident having sticks Danda and Lathi) in their hands and were fighting with each other complainant ASI along with personnel came down from police mobile and rushed towards the crowd so a bullet came from an unknown side that hits the left leg of PC Soomar and the people ran away towards the narrow street complainant immediately set the above mentioned PC for the purpose of treatment via police mobile to Jinnah Hospital and complainant along with other PC(s) ran behind people and caught one person who at inquiry told his name as Owais Khan son of Abdullah Khan in front of official witness PC Tajamal, PC Shahid searched the persons and in his right hand he kept a pistol 9MM with loaded magazine 3 round wiring dark silver bearing body No. 544831 ACL and in English 39X19 TAURUS were recovered

and nothing else came out on more search the detainee failed to provide the license on the spot upon inquiring and the recovered weapon falls under Sindh Arms Act Section 23(1) A other than the detainee the escaped 8-10 fellows face identifiable crime falls under Section 147/148/353/324/186 PPC after the occurrence crime arrested the accused namely Owais Khan on the spot and the ammunition of weapon was sealed and pasted towards back side of sketch of person and sent it to the FSL for investigation and one more search find out the two empties of 9MM sealed separately and upon inquiring came to know that one person named Saad Khan son of Ayam Khan got shot in this fight injured in admitted in the Jinnah hospital on return to PS lodged FIR on the above incident.

2. 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 FIR 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 324 PPC; that even according to medical reports, injuries are in the simple nature which entails maximum punishment upto seven years thus does not attract the prohibitory clause of section 497 Cr. PC, and that nothing as such was recovered from the applicant. The alleged weapon has been foisted upon the applicant. Learned counsel pointed out that arrest and recovery are doubtful so far as the alleged weapon is concerned he submitted that the police has tempered the description of the 9MM pistol shown in FIR No. 206/2023 and the name of Saad Khan was removed and the name of the applicant was mentioned with having one digit pistol number changed i.e No.ACL-34438I. He submitted that neither the accused Saad Khan nor PC Muhammad Soomar has sustained any fire injuries in the alleged incident. He next argued that affidavits of eyewitnesses prima facie show that malpractice of the police. Learned counsel referred to the call date recording of the complainant and submitted that he was not present at the spot. Learned counsel attempted

to disclose the actual bone of contention between the parties who had attached on the shop of the father of the applicant such FIR No. 189/2023 was lodged which lead the cross fight in the malafide on the part of the complainant cannot be ruled out. He referred the FIR No. 207/2023 and submitted that the complainant party assaulted the father of the applicant and this is the case of counterblast, which requires a thorough probe so far as the guilt of the present applicant is concerned. 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, the question whethe4r 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.

7. The grant of instant post-arrest bail is mainly urged because the injuries are on the non-vital organ of the victim giving rise to the reasonable suspicion to the fact whether an offense under Section 324 and 353 PPC are attracting or otherwise, for that the trial Court will look into every aspect of the case by recording the evidence of the parties.

8. To better appreciate the grounds put forth for the grant of post-arrest bail in 324 PPC cases, a pressing need is felt to have a look at the legislative history of section 324 PPC, the mischief of which is attracted

when an attempt to take the life of a living person is made. Originally, Section 307 PPC was an enabling provision dealing with the offense of attempt to murder and its language for reference sake is being reproduced hereunder:-

"307. Attempt to murder ---Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of 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 be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned."

9. The law relating to offenses against Human Body changed in pursuance of a direction given by the Shariat Appellate Bench of the Supreme Court of Pakistan in the case reported as Federation of Pakistan through the Secretary Ministry of Law and another Vs Gull Hassan Khan (PLD 1989 SC 633). In consonance with the observation so given in the above-referred case, Chapter XVI of The Pakistan Penal Code 1860 titled "OF OFFENCES AFFECTING THE HUMAN BODY" was revamped through Criminal Law (Second Amendment) Ordinance 1990 After the amendment, section 324 PPC was inserted to cater to the need of dealing with the offense of attempt to commit murder/qatl-1-and which for reference sake is being reproduced hereunder:-

"Whoever does any act with such intention or knowledge and under such circumstances, that, if he by that act caused qatl. he would be guilty of qatl-i-amd, shall be punished with imprisonment of 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 be liable to the punishment provided for the hurt caused Provided that, where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years"

10. Section 324 PPC was amended and at present is in force with the following phraseology:-

"Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatliamd, shall be punished with imprisonment of either description for a term which may extend to ten years,(but shall not be less than five years if the offence has been committed in the same or on the pretext of honour) 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 as aforesaid]be liable to the punishment provided for the hurt."

caused Provided that, where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years."

11. The language of amended Section 324 PPC is explicit in sense and leaves no room for discussion that an act of the accused towards taking the life of his adversary is made punishable with imprisonment up to 10 years. If such an act of the accused culminates in the infliction of injury to the victim, he also becomes liable for the punishment provided for the nature of the hurt received by the victim.

12. 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 offence: The intention to kill is needed to be proved clearly beyond reasonable doubt. To prove this, the prosecution can make use of the 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 offence The intention and the knowledge resulting in the attempt to murder by the accused is also needed to be proved for conviction under this section*
- iv) *The act by the offender would cause death in its ordinary course.*

13. Though the offense under section 324 PPC entails punishment of upto 10 years and attracts the stringency of the prohibitory clause of section 497 Cr.PC. 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 Against the above backdrop, the prima-facie applicant has not been assigned the role of firing from a pistol upon PC Soomar. Besides, there is a contradiction in the version of the complainant so far as the description of the alleged pistol is concerned, the Mashirnama of arrest and recovery and FIR No.205/2023 and 206/2023 show a different story, which requires further inquiry as provided under Section 497(2) Cr.PC. Further, it was difficult to ascertain at the present stage who was the aggressor as both the private parties had lodged cases against each other. On the aforesaid proposition I am guided by the decisions of the Supreme Court in the cases of *Gul Deen v. The State* **2011 SCMR 1997**, *Muhammad Iqbal The State* **2011 SCMR 1943**, *Ansar Mehmood v. The State* **2011 SCMR 1524** and *Hamza Ali Hamza v. The*

14. Prima-facie, sufficient material has not been collected to connect the applicant with the commission of the alleged crime, rendering him entitled to the concession of post-arrest bail.

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

16. These are the reasons for my short order dated 12.07.2023 whereby I have allowed the bail application and admitted the applicant to post-arrest bail in the aforesaid crime subject to furnishing 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 .

17. 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