

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Bail Application No. 1150 of 2023

Applicants : (1). Abdul Razzak s/o Jean Khan (2). Nadir Ali (3). Ghulam Hussain (4). Muhammad Nasir, all ss/o Abdul Razzak, through Mr. Ghulamullah Chang Advocate

Respondent : The State, through Mr. Siraj Ahmed Bijarani, APG.

Complainant : Mst. Farah w/o Nadir Ali d/o Muhammad Yasir Meo, through Ahmed Murtaza A. Arbab, Advocate

Date of hearing : 11.06.2024
Date of order : 11.06.2024

ORDER

Zafar Ahmed Rajput, J:- Having been rejected their earlier bail applications bearing No. 1341, 1352 and 1353 of 2023 by the Court of 2nd Additional Sessions Judge, Tando Allahyar, applicants/accused above-named, through instant Criminal Bail Application have sought pre-arrest bail in Crime No. 55 of 2023, registered at P.S. Nasarpur under Section 324, 506 (ii), 504, 337-F(vi) & 337-F(ii), P.P.C. Applicants were admitted to interim pre-arrest bail by this Court vide order dated 23.10.2023, now they seek confirmation of their bail.

2. Precisely, the facts of the prosecution case are that, on 07.10.2023, complainant Mst. Farah w/o Nadir Ali d/o Muhammad Yasir lodged aforesaid F.I.R., stating therein that about three years back she was married to Nadir Ali (*applicant No.2*) from whom she has two sons, After marriage, the applicants, who are her father-in-law, husband and brother-in-laws, used to ask her for demanding her share in land and property from her father but she refused them; that on 20.09.2023 at 10:00 a.m., the applicants duly armed with iron rod, lathi and pistols assaulted on her. She was taken to Civil Hospital, Tando Allah from where she was referred to LMCH, Hyderabad for treatment

and on 28.09.2023, she obtained Medico-Legal Certificate (MLC). It is thereafter the instant F.I.R. was lodged by her.

3. The learned counsel for the applicants has mainly contended that the applicants are innocent and have falsely and maliciously been implicated in this case by the police at the behest of the complainant with ulterior motives; that even on 20.09.2023, the complainant was not present at the house of applicants as, on 18.09.2023, the applicant No.2 had already pronounced her three *talaqs* and on 21.09.2023 he filed Cr. Misc. Application No. 832 of 2023 apprehending his victimization at the hands of the complainant party; that no specific role has been assigned to the applicants; that section 324, P.P.C has wrongly been applied in the case, otherwise, neither intention of causing murder appears in the contends of F.I.R. nor the complainant has received any grievous injury on any vital part of her body; that there is an inordinate delay of 17 days between the incident and registration of F.I.R. which has not been explained by the complainant; that the applicants have made out a case for further enquiry as such, the interim pre-arrest bail granted to the applicants may be confirmed.

4. On the other hand, learned counsel for the complainant and APG have vehemently opposed this application on the ground that the applicants have caused hurt to the complainant on various parts of her body due to which her 8th and 9th ribs have fractured; that the applicants challenged the MLC of the complainant before the Special Medical Board ("**SMB**") but the members of the SMB unanimously declared the MLC as correct vide report dated 31.01.2024; that after issuance of MLC by the concerned medico-legal officer, the complainant lodged the instant F.I.R.; therefore, the delay has properly been explained; that since the applicants are accused of murderous assault, the instant application is liable to be dismissed. In support of their contentions,

they have relied on the case of *Ahtesham Ali vs. The State* (2023 SCMR 975), *Ghulam Qadir vs. The State* (2022 SCMR 750), *Qayyum Khan vs. The State* (2022 SCMR 273) and *Habibullah Jan and another vs. The State* (2020 SCMR 1278).

6. Heard, record perused.

7. It appears that the alleged incident took place on 20.09.2023; the MLC was received by the complainant on 28.09.2023 yet the F.I.R., wherein an old aged father and his three sons have been booked, was lodged on 07.10.2023, with delay of seventeen days from the day of alleged incident and ten days of receiving MLC. Hence, deliberation and consultation before lodging of F.I.R. cannot be ruled out. No specific role has been assigned to applicants for causing alleged injuries. As per prosecution case, applicant No. 1 was armed with lathi; applicant No. 2 with iron rod while applicants No. 3 and 4 were with pistol. However, it is an admitted position that the complainant has not received and firearm injury. Except displaced fractures of the 8th and 9th ribs, no traumatic bony lesion has been seen by the SMB on any other part of body of the complainant. The alleged injury has been declared by the MLO as *Ghayr-jaiyah Munaqqillah*, falling under section 337-F (vi), P.P.C. which is punishable with imprisonment up to seven years as *Tazir*; hence, the alleged offence does not fall within the prohibitory clause of Section 497, Cr. P.C. So far, application of section 324, P.P.C., is concerned, had it been intention of the applicants to commit *qatl-e-amd* of the complainant then there would have been firearms injury on her vital part of the body; hence, it is yet to be seen if applicants, in the circumstances, had any intention to commit *qatl-e-amd* of the complainant and such question could only be determined at trial. As such, case of the applicants is covered under sub-section (2) of section 497, Cr. P.C., requiring further inquiry into their guilt. Ordinarily, in such cases, the bail is to be granted as a rule. The present case does not fall within the exception laid

down by the Apex Court in the case of *Tariq Bashir vs. The State* (PLD 1995 SC 34). The case-law cited by the learned counsel for the complainant proceeds on different facts and do not advance his case for the rejection of pre-arrest bail. On account of multiple firearm injuries, the Apex Court found the cited cases as cases of murderous assault; however, such aspect of the case is conspicuously missing in the present case.

8. In the circumstances of the case mentioned above, I have found the case against the applicant one of further inquiry into his guilt, as envisaged under subsection (2) of Section 497, Cr. P.C.; hence, the interim bail already granted to the applicant vide order dated 23.10.2023 is confirmed on the same terms and conditions.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. However, in case the applicants misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving them notice, in accordance with law

Cr. Bail Application stands disposed of.

JUDGE