

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
Criminal Bail Application No.S-234 of 2023

Date	Order with signature of Judge
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1. For orders on office objection at flag `A`
2. For hearing of Bail application

Date of hearing: **23.06.2023**

Mr.Sohail Ahmed Khoso, Advocate for the Applicant  
Mr. Muhammad Ali Napar, Advocate for Complainant  
Mr.Shafi Muhammad Mahar, Deputy Prosecutor General

**ORDER**

**Amjad Ali Bohio, J:** Applicant Raheem Bux, whose bail application has been dismissed in Criminal Bail Application No. 480/2023 by the Court of Additional Sessions Judge-IV (Hudood), Sukkur, through an order dated 31.03.2023, has now preferred instant bail application in Crime No. 174/2022. This application pertains to the offences under sections 324, 337-A(i), (ii), (iii), 506/2, 504, 147, 148, and 149 of the Pakistan Penal Code in the above crime number registered with the Police Station 'C' Section Sukkur.

2. The facts of the prosecution's case are outlined in the attached FIR, which is referenced in the bail application memo and following the principles laid down in case reported as Shakeel v. The State and others (PLD 2014 SC 458), it is unnecessary to reproduce the details of FIR.

3. The learned counsel for the applicant argues that the injuries sustained by Muhammad Urs (complainant's father) were self-inflicted and manipulated. It is contended that the elements of section 324 of the Pakistan Penal Code (PPC) are not applicable to the aforementioned offence. Except for injury numbers 2 and 6, all other injuries suffered by Muhammad Urs are bailable. Additionally, there was a significant delay of two and a half hours in registration of the FIR. Furthermore, no incriminatory material has been recovered from the applicant/accused, who has been in custody since November 17, 2022. He argues that co-accused have already been granted bail, the applicant/accused is also entitled to the concession of bail, especially considering his age of 60 years. During the course of arguments, the applicant's counsel did not emphasize the grounds of the applicant/accused being a patient with an eye

problem and the impracticability of receiving treatment in jail. The main contention of the counsel is that the applicant/accused does not have a prior conviction and is not a habitual, hardened, desperate, or dangerous criminal. Therefore, it is argued that the alleged harm caused by him should result in liability for payment of Arsh (compensation) rather than Tazir (punishment). The counsel relies on various cases, including Irfan v. The State and another (2021 P.Cr.L.J Note 49), Abdul Wahab and others v. The State and others (2019 SCMR 516), Asif Ali v. The State (2000 YLR 166), Ali Sher and another v. The State (2022 P.Cr.L.J Note 33), Haji MAA Din and another v. The State and another (1998 SCMR 1528), Nooruddin and another v. The State (2005 MLD 1267), Shahid Raziq alias Shahid v. The State through Advocate-General and another (2012 P.Cr.L.J 1560), and Ali Muhammad v. The State (PLD 2009 Lahore 312).

4. The learned Deputy Prosecutor General (DPG) and counsel for the complainant have opposed the bail application, arguing that the injured party, Muhammad Urs, is an elderly individual aged 62. They contend that the applicant/accused inflicted chopper blows on various parts of his body, including the head, which is a vital organ. The medical certificate states that both head injuries were declared as Shujjah-i Hasimah, and Muhammad Urs was admitted to the ICU at Ghulam Muhammad Mahar Medical College Hospital in Sukkur in the Neuro Surgery department. Moreover, the distance between place of incident and P.S. is only of two kilometers as such the complainant promptly lodged the FIR within two and a half hours, leaving little room for the possibility of false implication. The allegations against the co-accused who have been granted bail, are distinct from the allegations levelled against applicant/accused in the promptly lodged FIR. It is stated that the applicant/accused, along with the co-accused, planned their visit to the complainant's house, and he specifically inflicted chopper blows on Muhammad Urs' head, causing him to fall down and he received ten injuries whereafter injured Muhammad Urs was immediately taken to the Civil Hospital (GMMMC) in Sukkur, where he received treatment and fortunately survived. The elements of section 324 of the PPC are highly relevant to the actions of the applicant/accused. Therefore, it is argued that he does not deserve the concession of bail since the offense under sections 324 and 337-A(iii) of the PPC falls within the prohibitory clause of section 497 of the Criminal Procedure Code (Cr.P.C). The trial court rightly dismissed the previous bail application on

behalf of the applicant/accused, and the current application should also be dismissed. In support of these contentions, reliance is placed on various cases, including Muhammad Islam v. The State and other (2018 MLD 90), Abdul Sattar v. The State (2018 YLR 1690), Ghulam Qammer Shah v. Mukhtiar Hussain and others (PLD 2015 Supreme Court 66), Allah Bachayo and others v. The State (2009 SCMR 1352), Nazir Ahmed and another v. The State and others (PLD 2014 Supreme Court 241), The State through Advocate-General, N.W.F.P. v. Zubair and 4 others (PLD 1986 SC 173), Muhammad Anwar v. Muhammad Akram and others (PLD 2016 Supreme Court 65), and Nisar Ahmed v. The State and others (PLD 2016 Supreme Court 11).

5. I have carefully considered the contentions raised by the counsel for both parties, thoroughly reviewed the relevant record and papers, and examined the aforementioned cases relied upon by the counsel for both sides. It is noted that the incident occurred at 9:00 a.m., and the matter was promptly reported to the police within two and half hours at 11:30 a.m., providing all the necessary details. On the day of the incident, i.e. November 16, 2022, the injured Muhammad Urs, was unable to give statement due to his serious condition. He was admitted as an indoor patient at Ghulam Muhammad Mahar Medical College Hospital in Sukkur and his statement was recorded on 19-11-2022 wherein, he specifically attributed the responsibility for causing the injuries to the present applicant/accused. According to the report by Dr. Ishfaque Ali, Medical Officer at GMMC Hospital Sukkur, the injured Muhammad Urs sustained the following injuries:

- i. Incised wound present at Rt: side of Forehead extending up to outer canthus.
- ii. Incise wound present at mid Forehead extending up to Rt: lower side of Forehead oblique in manner measuring  $7 \times \frac{3}{4} \times \frac{3}{4}$  c.m.
- iii. incise wound present at upper part of Rt: side of Forehead measuring  $5 \times \frac{3}{4} \times \frac{1}{2}$  cm.
- iv. incise wound present at Rt: side of temporal region of scalp measuring  $4 \times \frac{3}{4} \times \frac{1}{2}$  cm.
- v. Incise wound present at Rt: parietal region of scalp measuring  $4 \times \frac{3}{4} \times \frac{1}{2}$  cm.
- vi. Incise wound present at Rt: side of parieto temporal region of scalp measuring  $4 \times \frac{3}{4} \times \frac{1}{2}$  cm.

vii. Incise wound present at mid of Rt: Ear (Mid of Helix) measuring 6x ½ x ¾ cm.

viii. Incise wound present at Rt: Occipital region of scalp measuring 4x ¾ x ½ cm.

ix. Injury present at Rt: side of cheek measuring 3 x ½ x ¼ c.m with devoid / miss of skin and

x. Injury present at Rt: side of nose measuring 3x2 cm with devoid miss of skin.

6. The Medical Officer, upon issuing the final Medico-legal Certificate, formed opinion stating that injuries No. 2 and 6 exhibited fractures on the left side of the Frontal Bone and the right Fronto Parietal Bone, respectively, and categorized them as "Shajjah-i-Hashimah" (serious injuries) on the basis whereof the Investigating Officer (I.O.) included section 337-A(iii) of the PPC, which is reproduced below for easy reference:

“337-A(iii) *Shajjah-i-hashimah* to any person, shall be liable to *arsh* which shall be ten percent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir*.”

7. It is evident that there exists an ongoing feud between the parties involved, and the applicant/accused arrived at the scene accompanied by co-accused individuals named Khuda Bux @ Raja, Ali Bux @ Ali, and Ali Haider @ Joni, all armed with pistols. Additionally, there was an unidentified person carrying a lathi, while the applicant/accused himself was carrying an iron chopper. It is worth noting that the applicant/accused was the sole individual responsible for inflicting the aforementioned injuries, considering the choice of weapon, the specific body parts targeted and the severity of the injuries themselves. As per record, the iron chopper used by the applicant/accused was lethal and the targeted body part was a vital organ resulting in injuries No. 2 and 6 being categorized as serious. In these circumstances, it is apparent that the elements of section 324 of the PPC are applicable to the actions of the applicant/accused. Consequently it is observed that he deliberately inflicted severe injuries on an elderly individual in a brutal manner, resulting in causing of serious injuries. The offense falls within the prohibitory clause of section 497 of the Cr.P.C, as the sentence prescribed under section 324 of the PPC is not merely ten years but life imprisonment, as established in the case of Muhammad Bashir and 3 others v. Manzoor Ahmed Khan and another (2002

YLR 2955). At this stage it cannot be definitely ascertained that his intention was not to cause the death of Khan Muhammad Khan, P.W. It is also incorrect to hold at this stage that his case does not fall within the prohibitory clause of section 497, Cr.P.C.

8. Moreover, it is also observed that the trial court has considered all the facts and the role played by the applicant/accused before dismissing the bail application. It is important to note that after his arrest on November 17, 2022, the applicant/accused also produced a bloodstained chopper (kaat) on November 20, 2022, in the presence of private mashirs Faisal Ali and PC Babar Ali. The chopper was then sent to the Chemical Examiner on November 21, 2022. The argument raised by the applicant's counsel regarding rule of consistency and the bail granted to co-accused individuals does not apply to the applicant/accused in this case because the main role of inflicting chopper (kaat) blows on vital parts of Muhammad Urs's body, specifically the head, ear, and face, is specifically attributed to the applicant/accused. On the other hand, the remaining accused individuals were armed with pistols and a lathi and their overt acts were limited to issuing threats to deter the prosecution witnesses from intervening.

9. The facts mentioned in the case laws relied upon by the applicant's counsel are distinguishable and not relevant to support the applicant/accused's claim for bail, especially when the specific role of causing all ten injuries, including the dangerous injuries No. 2 and 6 categorized as "Shajjah-i-Hashimah," on the head of Muhammad Urs, is attributed to the applicant/accused Raheem Bux.

10. Furthermore, it is observed that in his statement recorded under section 161 of the Cr.P.C. on November 19, 2022, after being discharged from the hospital, injured Muhammad Urs provided a detailed account of the incident and specifically identified the applicant/accused as the one responsible for causing the injuries. The FIR was fully supported by the statements of prosecution witnesses recorded under section 161 of the Cr.P.C. It was also corroborated by the Medical Certificate, which categorizes injuries No. 2 and 6 as dangerous and falling under section 337-A(iii) of the PPC, as non-bailable offence falling within the prohibitory clause of section 497 of the Cr.P.C. To support such view, reliance may well be placed on case of *Muneer Hussain v. State* (2022 P.Cr.L.J. Note 111).

11. Thus, this case does not fall within the scope of "further inquiry" or the need for additional investigation as defined in subsection (2) of Section 497 of the Cr.P.C. As a result, the present bail application, lacking merit, is hereby dismissed.

12. It is important to note that the observations made above are tentative and provisional in nature as are apparent on the record. These observations are not intended to create any prejudice against either party during the trial proceedings. The final determination of the guilt will be made based on the evidence produced by both parties during the trial.

JUDGE

Suleman Khan/PA