

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Bail Application No.S-02 of 2024

Applicant: Tario @ Tara Chand son of Heero
Through Mr. Hussain Bux Mari, Advocate

Respondent: The State.
Through Mr. Dhani Bakhsh Mari, A.P.G.

Complainant: Bheemon son of Amendo.
Through Mr. Wishan Das Kolhi, Advocate.

Date of order: 15.02.2024

ORDER

Amjad Ali Bohio, J: After failing to secure the concession of post-arrest bail from the Court of the learned Additional Sessions Judge, Khipro, in Crl. Bail Application No.138/2023, as per order dated 09.12.2023, the applicant now seeks the same concession from this court in Crime/FIR No.44/2023, registered at PS Khahi under sections 324, 334, 114, 34 P.P.C.

2. According to the allegations outlined in the F.I.R., on 05-07-2023 at 2000 hours, the applicant/accused along with accused Rano and Dharshi armed with hatchets and accused Chandio and Harchand armed with lathies, along with two unidentified culprits on having altercation, the applicant inflicted hatchet blow at the left arm of Kirshan, resulting in the amputation of his left hand.

3. The learned counsel representing the applicant has argued that the applicant is innocent and has been falsely implicated due to a matrimonial dispute between the parties, as indicated in the F.I.R. Additionally, it is contended that the specific injury attributed to the applicant is yet to be determined if falling under section 324 P.P.C. Furthermore, there is a significant delay of 27 days in lodging the F.I.R., for which no satisfactory

explanation has been provided. It is also highlighted that the co-accused have already been granted bail. Thus, the principle of consistency warrants similar treatment for the applicant. Moreover, there is no risk of the applicant fleeing from justice, and he has no prior convictions, entitling him to bail. He relied upon the case law viz: Muhammad Rizwan Vs. Gulfam and another (2009 P Cr LJ 73) and Muhammad Luqman and another Vs. The State (2014 SMCR 12).

4. The learned State Counsel, assisted by the counsel for the complainant, has argued that there are specific allegations against the applicant of causing the amputation of the left hand by inflicting a direct hatchet blow, establishing a prima facie connection to a crime that falls under a prohibitory clause under section 497 Cr.P.C. Hence, they assert that there is no need for further inquiry into his guilt. They further emphasize that the medico-legal report fully supports the complainant's version of events and that the incident was witnessed by natural witnesses present at the scene. Additionally, it is highlighted that following the occurrence, the applicant and co-accused fled from the spot. Summing up their arguments, the learned A.P.G. contends that section 334 P.P.C. is entirely applicable to the facts and circumstances of the case. This section entails a sentence of 10 years, falling within the prohibitory clause of section 497(1) of the Cr.P.C. Consequently, he opposes the application for bail.

5. In the instant case, applicant is specifically nominated in the F.I.R. with a defined role in causing a direct hatchet blow to the left arm of PW Kirshan, resulting in the amputation of his hand at the wrist. Eyewitnesses have fully implicated the applicant in the commission of the offense in

their statements recorded under section 161 of the Cr.P.C., alleging that the applicant caused the aforementioned injury. Upon examination, the Medical Officer, with the assistance of Radiological Expert opinion from the Additional Medical Superintendent (MLC) at LUMHS Hyderabad, diagnosed the injury as "*Traumatic Amputation at Level of Left Upper Limb Between Elbow and Wrist*", classifying it as "*Itlaf-i-udw*" falling under section 334 of the P.P.C. This offense carries a sentence of up to 10 years as ta'zir. There is no contradiction in between the ocular version given in F.I.R., to that of medical evidence and so also the role applicant was not at par with that of his co-accused, therefore, the facts reported in the case law 2009 P Cr.L.J 73 & 2014 S.C.M.R., are not relevant here.

6. The presence of eyewitnesses at the time of the incident has been duly established and justified. There is no reason to doubt the credibility of their statements. Although the court granted post-arrest bail to other named accused but it is observed that the role of the applicant differs significantly from that of the co-accused and is not similar. Therefore, the principle of consistency does not apply to the applicant's case. Reliance is placed in this regard on the case of *Bakhti Rahman v. The State* (2023 S.C.M.R 1068), wherein it was held:

"8. So far as the rule of consistency or parity for considering the grant of bail to the petitioner is concerned, in the present facts and circumstances of the case we cannot lose sight of the fact that the roles of the co-accused who were granted bail are distinguishable to the role assigned to the petitioner who caused the fatal injury to the complainant. The doctrine of parity or rule of consistency in a criminal case elucidates that if the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike". The concept of equal justice requires the appropriate comparability of roles and

overt act attributed to the co-offenders, but in case of difference or disparity in the roles due allowance cannot be extended to the co-offenders on the perspicacity that different sentences may reflect different degrees of culpability and or different circumstances.”

7. Regarding the delay of 27 days in lodging the F.I.R., the counsel for the complainant argues that after Kirshan was discharged from the hospital on 10-07-2023, the police initially refused to register the F.I.R. Consequently, the complainant had to submit an application to the Additional Sessions Judge/Ex officio Justice of Peace, Khipro, which resulted in the delay in lodging the F.I.R. Thus, a plausible explanation for the delay is available on record. Reference is made to the case of Wazir Ali v. State (2023 Y L R 1582), where it was held that the delay in lodging the F.I.R. is not automatically a ground for granting bail. Additionally, it is noted that the prosecution did not gain any undue advantage from the delay. It is observed that the significance of the delay in lodging the report arises only when there is doubt regarding the identity of the culprit.

8. Upon a preliminary assessment of the evidence on record, it appears that there is a prima facie connection between the applicant/accused and the allegations leveled against him in the case in hand. The trial court has thoroughly addressed all the points raised in the bail application, and upon review, it is evident that the counsel for the applicant has failed to demonstrate any illegality or unjustified reason for rejecting the bail application by the trial court. While the case laws cited by the counsel for the applicant have been examined, which were found not to be applicable to the peculiar circumstances of the present case. It is important to note that in the administration of criminal justice, each case must be decided based on its own unique

facts and circumstances. Therefore, courts are required to exercise their jurisdiction independently, considering the merits of each case impartially as held by Hon'ble Supreme Court of Pakistan in the case of *The State v. Haji Kabeer Khan* reported as PLD 2005 Supreme Court 364 and *Muhammad Faiz alias Bhoora v. The State and another* reported as 2015 SCMR 655.

9. As a consequence of the preceding discussion, the instant application is hereby dismissed.

10. It is important to emphasize that the observations provided above are tentative and are not intended to exert any influence on the trial court's deliberations regarding the merits of the case against the applicant. The trial court without being influenced by any observations noted above has to conduct an independent assessment of the evidence and arguments presented before it in order to arrive at a fair and just decision.

JUDGE

Faisal