

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-358 of 2023
(UbedullahKalwar Vs. The State)

Date	Order with signature of Judge
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1. *For Orders on office objection.*
2. *For hearing of bail application*

M/s Ali Gul Abbasi and Muhammad Zohaib Azam advocates for applicant.

Mr. Sikandar Ali Junejo, advocate for complainant.
Syed Sardar Ali Shah Rizvi Additional P.G for State

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ORDER
04-09-2023

KHADIM HUSSAIN SOOMRO, J.By this order, I intend to dispose of bail application moved on behalf of the applicant/accused named in Crime No. 24/2023, offence u/s 324, 336-B, 34 PPC registered at Police Station Baiji Sharif, District Sukkur. Prior to this the applicant/accused moved like nature application, but the same was declined by learned IInd Additional Sessions Judge/Gender Based Violence Court, Sukkur vide order dated 26-05-2023, hence he preferred the instant Bail Application.

2 . Brief facts of the prosecution case are that complainant Mst. Salma lodged the FIR on 09-05-2023, alleging therein that on 09-03-2023, her sister Mst. Najma and her brother Muhammad Younis came to meet her at her house situated in the village of Hussain Kalwar, Taluka Pano Akil. She was preparing meals for them in the kitchen. At approximately 12:00 noon, Ubedullah, the husband of the victim, entered the kitchen along with his second wife, Mst. Kiran. They were carrying plastic bottles filled with petrol. They throw petrol at the victim, causing her to cry out for

help. Her sister, Mst. Najma and her brother, Muhammad Younis, heard her cries and rushed to the scene. Upon seeing them, Ubedullah Kalwar, the accused, took out a matchbox from his pocket and set the victim on fire. Meanwhile, Mst. Kiran continued to throw petrol at her, causing the fire to spread on her body and left arm. The complainant's brother and sister poured water on her body, and by the grace of God, she was saved. However, her left arm suffered severe burns. Upon hearing the cries of the complainant, the neighbours quickly rushed to the scene and also saw the accused persons, who, on seeing them, escaped from the place of incident. Thereafter, her brother and sister brought the complainant for treatment in a private Hospital, where she remained under treatment. Accused Ubedullah was sending messages to the complainant that if she registered the FIR or complaint against them, they would commit her murder. Ultimately, the complainant appeared at the Police Station and lodged the FIR above.

3. Learned counsels for the applicant submit that applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motive; that there is delay of about two months in lodging of the FIR for which no plausible explanation has been furnished; that since the day of occurrence and the registration of the FIR, the injured has never been appeared before the police to obtain the letter for treatment; that the witnesses are un-natural as they are resident of District Ghotki and the manner of incident is also doubtful because the complainant/victim has sustained injury only on her left arm; that at the relevant time, the applicant was on duty and brother of applicant namely Pir Bux who is retired PC moved application to SSP Sukkur for conducting inquiry into the matter regarding the

genuineness of the allegation leveled by the complainant in the FIR; that at the relevant time of the incident the children of the applicant/accused as well as complainant namely baby Dua aged about 15/16 years and Mudassir aged about 9/10 years daughter and son respectively were present, but they are not shown as witnesses of the incident, therefore, the case of the applicant is one of the further inquiry and he is entitled to the grant of post arrest bail.

4. Learned Additional P.G. assisted by learned counsel for the complainant, have opposed the bail application on the ground that there was no ill will on the part of the complainant to implicate her husband in the present and P.W.s came at the place of the incident for visiting purpose and they have witnessed the incident; that the offence falls within the ambit of section 336-B PPC which provides imprisonment for life; that applicant/accused is serving in police department, he was under obligation to report the matter at police as provided u/s 174 Cr.P.C.

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

6. Admittedly, the FIR has been delayed for about two months, for which no plausible explanation has been furnished by the complainant in this regard. The record reflects the complainant has not approached the police for a single time after the incident. The counsel for the applicant has brought on record an application moved by the complainant on 08-05-2023, to SSP concerned, and on the very next day her FIR was registered. It is admitted position that baby Dua as well as Muddasir daughter and son, respectively of the applicant as well as complainant, were present at the time of the incident, but their statement u/s 161 Cr. P.C. have not been recorded, which creates doubt upon the prosecution story. The Court has

adjourned the proceedings on three occasions due to the absence of a medical certificate, which has not yet been submitted. The determination as to whether the injuries sustained by the injured fall within the scope of section 336-B PPC remains uncertain, as there is no medical certificate available on the record.

7. As per the contents of the FIR, the applicant/accused and his second wife, Mst. Kiran threw the petrol upon the complainant. It is noteworthy that the complainant got an injury solely on her arm, which is a matter of surprise. Moreover, during the course of the investigation, neither the alleged bottles containing the petrol nor the burnt clothes worn by the victim were recovered by the investigating officer. It is also admitted fact that the applicant/accused contracted a second marriage with accused Mst. Kiran resented the complainant a lot. As a result, the complainant has nominated the applicant/accused and his second wife as the accused in the present case, which creates doubt in the prosecution story.

8 . All the above facts, circumstances and the manner of the incident bring the case of prosecution within the parameters of further inquiry; therefore, the applicant/accused is admitted to bail subject to furnishing solvent surety in the sum of Rs. 100,000/- & P.R bond in the like amount to the satisfaction of learned trial Court.

9. Needless to mention that the observations made hereinabove are tentative in nature and shall not cause prejudice to the right of either party at trial.

J U D G E