

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Crl. Bail Application No.S-426 of 2023*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on O/objection at flag-A.*
2. *For hearing of bail application*

**25.08.2023**

M/s Suhail Ahmed Khoso and Ali Akber Narejo, Advocate for applicant.

Mr. Aftab Ahmed Shar, Addl. Prosecutor General.

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**O R D E R**

***KHADIM HUSSAIN SOOMRO, J;*** Through instant Crl. Bail application, applicant/accused Muhammad Saleh seeks post-arrest bail in Crime No.05 of 2023 registered at Police Station F.M, Narejo under Sections 324, 114, 337H(2), 148, 149 PPC. His earlier application for the grant of post-arrest bail bearing No.1618/2023 was heard and dismissed by the Additional Sessions Judge-III, Khairpur vide order dated 16.06.2023. Hence this bail application.

2. The facts of the prosecution case, in a nutshell, are that on 02.05.2023 at 2000 hours, the complainant, Shah Jehan, registered a First Information Report (FIR) at the Police Station, F.M, Narejo stated therein that he was engaged in manual employment. There is a longstanding conflict between the complainant and Zulfiqar Ali Bhangar, during which Zulfiqar Ali Bhangar's party remained annoyed and issued threats to inflict harm to Farooque Ahmed Bhangar regardless of the consequences. On the evening of May 1, 2023, the complainant, along with his brother Farooque Ahmed and cousin Khalil Ahmed, were in the vicinity of their village. Muhammad Saleh arrived on his motorbike and

proceeded to discharge rounds from a pistol in the air. Subsequently, Saleh fled the scene on his motorbike, while the complainant party chose to ignore this incident. According to the version provided, the complainant, accompanied by his brother Farooque Ahmed and cousin Khalil Ahmed, visited their land for work. As they were returning home after sunset at approximately 7:00 p.m., they came across five individuals approaching from the southern direction. The complainant was able to identify these individuals as Muhammad Saleh, Zulfiqar Ali, Ghulam Mustafa, Younis alias Chango, and Yousif. Both Muhammad Saleh and Zulfiqar Ali were armed with pistols; Ghulam Mustafa carried a K.Kov, while Younis alias Chango and Yousif were armed with guns. The accused individuals proceeded to overpower the complainant's party at gunpoint. Subsequently, Ghulam Mustafa investigated the others not to spare Farooque Ahmed due to an ongoing dispute and to carry out his murder; on his instigation, accused Muhammad Saleh and Zulfiqar Ali Bhangar with their pistols made direct firing upon the complainant's brother Farooque Ahmed, with the intention to commit his murder which hit him, and he raised cries fell down on the ground. The complainant party raised cries, and on their cries and firing attracted, the people of the village came running and on seeing them coming, all the accused, while resorted aerial firing upon the complainant party, fled away towards the southern side of the village. The complainant saw his brother, Farooque Ahmed, who had sustained a firearm injury on his left leg above the knee. Additionally, another gunshot had struck his left leg below the knee, resulting in through-and-through wounds and the presence of gushing blood. Subsequently, the individual lodging the complaint made arrangements for transportation and brought his injured sibling, Farooque Ahmed, to the Faiz Muhammad Narejo Police Station.

He obtained a letter for medical treatment and proceeded to the RHC Pir-jo-Goth. From there, he was referred to the Civil Hospital in Khairpur. He came at the police station and lodged a First Information Report (FIR) regarding the matter while his brother, Farooque Ahmed, remained in medical treatment.

**3.** After registration of the case, the police taken-up investigation and after completion of legal formalities have submitted the challan before the trial Court.

4. Learned Counsel for the applicant/accused submits that the injured person sustained two injuries, one above the knee and one below the knee. The trial court will determine, after leading evidence, who caused each specific injury to the injured person. The offence under Section 337F(v) of the PPC carries a maximum punishment of 5 years, which is not covered by the prohibition stated in Section 497. The ingredient of Section 324 are not attracted in the present case. Counsel has also placed reliance upon 2022 PCrlj 33, 2019 SCMR 516, 2023 SCMR 1397, 2022 SCMR, 264, 2012 SCMR 887, and lastly, requests for the grant of bail to the applicant accused.

5. Conversely, the learned Additional Prosecutor General argued that this case involves an incident of firing, which falls under the purview of Section 324 of the Pakistan Penal Code (PPC). The accused individuals are charged with attempting to commit murder against the injured person, who sustained injuries from the applicant and other accused persons. The specific allegation pertains to two gunshots, one above the knee and one below the knee, which were fired in close proximity. The medical evidence aligns with the details provided in the First Information Report (FIR). The present applicant/accused is fully participate in the commission of the offence and requests for the rejection of bail.

6. Heard the learned counsel for the applicant, complainant as well as Deputy Prosecutor General, and perused the material available on record with their assistance.

7. It is born out from the record that the applicant accused is nominated in the FIR, with the specific role of causing firearm injury to the injured. However, the counsel for the applicant submits that it is not clear from the record that who caused each specific injury to the injured person. The counsel further contented that the offence under Section 337F (v) of the PPC carries a maximum punishment of 5 years, which is not covered by the prohibition stated in Section 497 and makes the case of the prosecution one of the further inquiries. Section 497 of the Code of Criminal Procedure, 1898, provides a clear and unequivocal restriction on the provision of bail to an accused. This restriction applies where there are reasonable grounds to believe that the accused has committed an offence that is punishable by death, life imprisonment, or imprisonment for a period of 10 years. Nevertheless, according to subsection 2 of the aforementioned provision, there exists a provision that allows him to be exempted if, during any phase of the investigation, inquiry, or trial, it becomes evident that there is insufficient evidence to reasonably believe that he has committed a non-bailable offence. There must be substantial grounds to warrant a "further inquiry" into his culpability. Criminal cases are unique and cannot be governed by strict rules that apply universally. Each case must be evaluated based on its own specific facts and circumstances to determine the guilt of the accused. Therefore, the determination of "sufficient grounds" versus "further inquiry" must be made objectively, considering the evidence collected during the investigation. The phrase "there are no reasonable grounds for believing that the accused has committed a non-bailable

offence" carries significant weight and cannot be easily dismissed in the presence of material evidence that supports the alleged offence. Not every hypothetical question warrants further investigation simply because it can be answered during the trial after evaluating the evidence. The mere possibility of further inquiry, which is present in almost every criminal case, is not sufficient grounds to consider the matter under subsection (2) of section 497 of the Cr.P.C.2. It is evident that the concept of "further inquiry" is not subjective or based on denials or conflicting stories from the defence. It requires a clear conclusion that can be drawn from the available evidence, indicating a significant gap that needs to be investigated in the future with additional material that is currently unavailable. Based on the statement provided by the injured individual, along with credible eye-witness accounts that cannot be disregarded as false testimonies at this stage, and additional confirmation from medical evidence root out the possibilities of the further inquiry .

8 . Turning to the point emphatically raised by the learned counsel of the applicant that the injured sustained injury on the non-vital part of the body. The significance of a murderous assault lies in the deliberate targeting and infliction of harm upon both vital and non-vital portions of the victim's body. According to Section 324 of the Pakistan Penal Code (PPC), there is no differentiation made between vital and non-vital parts of the human body. Once the trigger is pressed and the victim is successfully targeted, the element of "intention or knowledge," as outlined in Section 324, PPC, becomes evident. The trajectory of a bullet is not influenced or directed by the assailant's choice, and they cannot use poor marksmanship as a justification for leniency during the bail stage. In this context, I have been guided by the Apex Court in the case of ***Sheqab Muhammad vs. State (2020 SCMR 1486)***.

9 Another important aspect of the present bail application is whether it falls within the ambit of section 324 or not. The applicant was accused of actively engaging in an incident that clearly falls under the offence of mischief as defined in section 324 of the Pakistan Penal Code, 1860. This offence carries a punishment of imprisonment for up to ten years. The application of section 497 of the Code, which prohibits circumvention of the bar on bail in cases where there are reasonable grounds to believe the accused is guilty, is relevant in this case. In this context the reliance can be placed in the case of **GHAZAN KHAN vs Mst. AMEER SHUMA and another (2021 SCMR Page-1157)**.

10 In any civilized legal system, ensuring the predictability of consequences for a criminal act is contingent upon strict respect for the law. It is essential to maintain peace in society by employing the means and procedures authorized by the law. The implementation of this measure serves to deter illegal activities while concurrently bolstering individuals' confidence in the efficacy and legitimacy of the legal system.

11. At the bail stage, only a tentative assessment is to be made, and deeper appreciation is not permissible. There is sufficient material on record to connect the applicant accused with the commission of the offence. The offence falls within the prohibitory clause of section 497, Cr.P.C. In this view of the matter, I am not inclined to grant post-arrest bail to the applicant accused. Hence, this Criminal bail application is dismissed. The case law cited by the defence counsel is not applicable to the facts and circumstances of the case.

12. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

13. The aforesaid bail application stands disposed of .

**J U D G E**

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