

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No. S-902 of 2023

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

ORDER

29.03.2024

Mr. Abdul Rasheed Kalwar, Advocate for applicant
Mr. Ubedullah Ghoto, Advocate for complainant
Mr. Shafi Muhammad Mahar, DPG

ZULFIQAR ALI SANGI, J.- Through the instant application, applicant/accused Zaffar @ Zafarullah son of Muhammad Siddique by caste Gabol seeks post-arrest bail in Crime No. **139/2023**, offence u/s 324, 114 & 34 PPC registered at police Station **Khanpur Mahar**, District Ghotki. Prior to this, the applicant/accused had filed post arrest bail application which was dismissed by the Court of learned Sessions Judge Ghotki vide order dated **11.12.2023**, which is impugned before this Court by applicant/accused through this bail application.

2. The facts of **cases** are mentioned in the memo of bail application and copy of FIR has been attached, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant/accused contends that applicant/accused is innocent and has falsely been implicated in this case due to enmity which is admitted in FIR; that the witnesses are closely related to each other therefore, are interested; that there is delay of more than 02 days in lodging of FIR to which no plausible explanation has been furnished by the complainant; that fire shot injury attributed to the applicant/accused is on non-vital part of body of injury Abdul Qayoum which is simple one, appears to have been managed; that case has been challaned and applicant/accused is no more required for further investigation. He prayed for grant of bail to the applicant/accused. He placed his reliance on the cases of **Saeedullah v. The state and another (2023 SCMR 1397)**, **Ali Raza v. The State and others (2022 SCMR 1245)**, **Aktharullah alias Akthar Ali v. The State and another (2021 SCMR 1287)** **Muhammad Faisal v. The State another (2020 SCMR 971)** and **Muhammad Umar v. The State and another (PLD 2004 Supreme Court 477)**.

4. Learned counsel for the complainant opposed for grant of bail on the ground that applicant/accused is nominated in the FIR with specific role of

causing firearm injuries to the PW/injured Abdul Qayoom; that the delay in registration of FIR is well explained by the complainant; that the ocular account furnished by the complainant is supported by medical evidence; that the offence with which applicant/accused charged is ***punishable up to 10 years*** and falls within the ambit of prohibitory clause of Section 497 Cr.PC, therefore he prayed for dismissal of bail application of accused. He placed his reliance upon cases of ***Sheqab Muhammad v. The State another (2020 SCMR 1486) and Ahtasham Ali v. The State (2023 SCMR 975)***.

5. On the other hand, learned Deputy Prosecutor General for the State supported the impugned order and also opposed for grant of bail to the applicant/accused on the ground that applicant/accused is nominated in the FIR with specific role and recovery of crime weapon used in the commission of offence has been effected from him. He placed his reliance upon case of ***Bashir Ahmed Leghari v. The State (2020 SCMR 595)***.

6. Heard learned counsel for the parties and perused the record.

7. From perusal of record, it reflects that the name of the applicant/accused transpired in the FIR with specific role that he along with co-accused duly armed with deadly weapons came at the place of incident, where on the instigation of co-accused Muhammad Siddique, the applicant/accused Zafar made straight fire upon PW/injured Abdul Qayoom with intention to commit his murder which hit him on his thigh of right leg, while other co-accused also caused him firearm injuries. After registration of the FIR, the investigating officer has recorded statements u/s 161 Cr.P.C of PWs, who have supported the version of the complainant coupled with the recovery of crime weapon which was used by the applicant/accused in the commission of offence. The empties recovery from the place of incident and crime weapon so recovered from applicant/accused were sent to FSL and such report received in positive which is available in police file. The medical evidence is also corroborated with ocular version. ***Moreover, applicant/accused was booked in a murder case by the complainant party to whom applicant/accused issued threats for withdrawal from said case and on refusal to withdraw the same applicant/accused caused firearm injuries to PW/injured Abdul Qayoom.*** By making fire shot upon the complainant party applicant/accused has repeated his criminal act willfully and intentionally. Reverting to the contention of learned counsel for the applicant that the injury assigned to applicant/accused is on non-vital part of body of injured is concern, I would like to say that a murder assault as defined in Section 324 PPC draws no anatomical distinction between vital or non-vital parts of human body, once trigger is pressed and the victim is effectively targeted "***intention or knowledge***" as contemplated by the Section 324 PPC is manifested, the course

of a bullet is not controlled or steered by assailant's choice nor can be claim, any premium for poor marksmanship. The delay in registration of FIR has been explained. The complainant first given priority to save the life of injured and then registered the FIR. Nothing has been brought on record to show that the applicant has falsely been involved in this case or any ill-will or malafide on the part of the complainant. Prima-facie, the sufficient material is available on record to connect the applicant/accused with the commission of the alleged offence.

8. In view of above discussion, the learned counsel for the applicant/accused has failed to make out a good case for grant of bail in the light of sub section (2) of Section 497 Cr.P.C. In such circumstances, the instant bail application is dismissed. It is settled law that each case is to be decided on its own facts and circumstances. The facts and circumstances of the case law relied upon by learned counsel for the applicant/accused are quite distinguishable from the facts of the case in hand, therefore the same is not helpful to decided the instant bail application.

9. 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/accused on merits.

J U D G E