

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S-126 of 2024

Date of hearing	Order with signature of Judge
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For hearing of bail application

ORDER

02.04.2024

Mr. Muhammad Javed Arain, Advocate for applicant
Mr. Qurban Ali Kalwar, Advocate for complainant
Syed Sardar Ali Shah, Addl. P.G

ZULFIQAR ALI SANGI, J.- Through the instant application, applicant/accused ***Sanaullah son of Gul Muhammad by caste Bhutto***, seeks pre-arrest bail in Crime No. **47/2024**, offence u/s 324, 114, 147, 148, 149, 504 PPC registered at police Station ***Daharki***, District Ghotki. Prior to this, the applicant/accused has filed such application for grant of pre-arrest bail, but the same was turned down by learned Additional Sessions Judge-II Mirpur Mathelo vide order dated **27.02.2024**, hence he filed instant bail application.

2. The facts of case 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 08 days in lodging of FIR to which no plausible explanation has been furnished by the complainant; that according to FIR allegation against applicant/accused Sanaullah is that he caused hatchet injuries to complainant/injured Mst. Zuhra but according to MLC kind of weapon used is hard and blunt substance; 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.

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 hatchet injuries to the complainant/injured Mst. Zuhra; 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 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 ***Ghulam Ahmed Chishti v. The State and others (2012 SCMR 649)***, ***Kashif Shabbir and others v. The State and others (2022 YLR Note 179)***, ***Waseem and 2***

others v. The State (2023 P.Crl. L.J Note 69) and Ghulam Hussain v. The State (2023 YLR 581[Sindh (Sukkur Bench)]

5. On the other hand, learned Additional 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 of causing hatchet injuries to the injured/complainant Mst. Zuhran; that witnesses in their statements recorded under section 161 Cr.PC had also implicated the accused with same role in the commission of offence; that ocular evidence had found corroboration from medical evidence; that prima facie Section 324 PPC was very much applicable against applicant/accused; that there appears strong material against applicant/accused which is connecting him with the commission of offence; that applicant/accused is not deserve to be enlarge on bail, therefore, he prayed that bail application of applicant/accused may be dismissed.

6. I have heard learned counsel for the applicant/accused, learned counsel for the complainant, learned Addl. P.G and have gone through the material available on record with their able assistance.

7. The bare reading of Section 324, PPC would confirm that the act of attempt should be with such intention or knowledge and under the circumstance in which the attempt is being made. So, it is obvious that an attempt to commit-Qatl-e-Amd there must be means-rea followed by act of wrongdoing which if done may cause Qatl of the person. The applicant/accused is nominated in FIR with specific role that he along with co-accused having hatchet came at the place of incident, where on the instigation of co-accused Habibullah, applicant/accused caused hatchet injuries to complainant/injured Mst. Zuhran with intention to commit her murder which hit him on her forehead. Prima facie Section 324 PPC is very much applicable against him. The delay in registration of FIR has been explained as the complainant first given priority to save her life and then registered the FIR. It is settled law that delay alone is not sufficient ground for grant of bail as has been held by the Supreme Court in the cases of ***Muhammad Amjad Shahzad vs. Muhammad Akhtar Shahzad (2022 SCMR 1299)*** and ***Ghulam Qadir vs. The State in (2022 SCMR 750)***. Other witnesses in their statements recorded under section 161 Cr.PC have also implicated the applicant/accused with same role in the commission of offence. The injury sustained by the complainant/injured is opined by the MLO as Shujjah-e-Hashmiah, which falls within the ambit of prohibitory clause of Section 497 Cr.PC. Nothing has been brought on record to show that the applicant/accused 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. Moreover, the case of accused Azizullah, Allah Warrayo @ Mitho, Habibullah and Aijaz Hussain @ Aijaz is on different footings, therefore principle of rule of consistency is not attracting to the case of applicant/accused.

8. It is settled principle of law that deeper appreciation of evidence is not permissible while deciding the bail plea of accused and material collected during investigation is to be assessed tentatively. From the tentative assessment of material available on the record in shape of FIR, statements of witnesses recorded U/S 161 Cr.P.C including medical evidence, prima facie, there appears sufficient evidence/material against the applicant/accused which connect him with the commission of offence. Resultantly, the instant bail application merits no consideration, which is dismissed accordingly and the interim pre arrest bail already granted to the applicant/accused, vide order dated **04.03.2024** is hereby recalled.

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

*M.Ali/steno**