

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1st Cri. Bail Appln. No.S-364 of 2021

Date _____
Order with signature of Hon'ble Judge _____

1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Sajid Hussain Mahessar, advocate for the applicant.
 Mr. Abdul Ghaffar Kalhor, Asst. Prosecutor General.
 Mr. Rafique Ahmed K. Abro, advocate for complainant, along with complainant.

Date of Hearing : 20.09.2021.
 Date of decision : 01.10.2021.

ORDER

Omar Sial, J.- Ayaz Ahmed Sarki has sought post arrest bail in crime number 79 of 2021 registered under sections 452, 506/2, 504, 337-A(i), 337-F(v) and 34, P.P.C. at the Thul police station. Earlier, his application seeking bail was dismissed on 24-7-2021 by the learned Additional Sessions Judge-I, Jacobabad.

2. The aforementioned F.I.R. was registered on 19-6-2021 on the complaint of Mansoor Latif Sarki. He narrated that his sister Roopa had married the applicant Ayaz Ahmed but about 3 years ago, Ayaz had thrown her out of the house. In the evening of that day, the complainant along with his brother Musawar and sister Roopa were at home when the applicant along with one unidentified man came to the house. The applicant in an aggressive manner asked Roopa that she should come back home and upon Roopa's refusal to do so, the applicant hit her with the butt of a pistol he was armed with at 3 places on her body. The 2 men then left the premises after threatening the family of dire consequences.

3. I have heard the learned counsel for the applicant and the complainant as well as the learned Assistant Prosecutor General. My observations and findings are as follows.

4. The incident occurred at 5:30 p.m. The injured was taken to the hospital at 7:00 p.m. and the F.I.R. was registered at 11:30 p.m. the same day. The learned counsel for the applicant has argued that the delay in

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the F.I.R. shows that the story in the same cannot be trusted. The delay and its impact on the prosecution case will be determined at the trial; however, upon a tentative assessment the delay is of not such a nature which would immediately create doubt at this preliminary stage.

5. The learned counsel has next argued that the injuries sustained by Roopa are all of such a nature that they carry a potential sentence of up to 5 years and thus fall within the non-prohibitory clause of section 497, Cr.P.C. He has therefore submitted that the concession of bail should be granted to the applicant. In this regard, he has relied upon the case of **Tariq Bashir and 5 others vs The State** (PLD 1995 SC 34). It is correct that *prima facie* the punishment for the injuries sustained by Roopa may fall within the non-prohibitory clause of section 497, Cr.P.C. and that in line with the *Tariq Bashir* case (*supra*) the refusal of bail in such cases is an exception. I am of the view that upon a tentative assessment this appears to be a case of gender-based violence. It has been observed by this Court that cases of such violence, often resulting in the murder of a woman, are on the rise, especially in the rural areas. This is one case where a woman has, *prima facie*, stood bravely against it and has been supported by the male members of her family, which again, is a rare phenomenon. In my opinion, this is an exceptional situation which would make the case fall within the category of cases in which bail can be refused for an offence, the punishment of which falls within the non-prohibitory clause of section 497, Cr.P.C.

6. Another aspect of the case that does not bode well with the applicant is that subsequent to the registration of the F.I.R., the father of the applicant filed a section 22-A and B, Cr.P.C. application before the learned Ex-Officio Justice of Peace, Jacobabad praying therein that an F.I.R. be registered against the brothers of Roopa on the ground that they had beaten him. The application was dismissed because the medical certificate produced by the father of the applicant had concluded that the injuries complained of were either self-sustained or as a consequence of a road accident. *Prima facie*, it appears that the application was filed to counter the case of the complainant, unfortunately yet another growing trend

7. In view of the above, the bail application stands dismissed.

However, as the applicant has been behind bars for nearly 3½ months and

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HIGH COURT OF SINDH CIRCUIT COURT
LARKANA

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53

Cr.B.A. No.S-364 of 2021

the evidence to be recorded is relatively short, it would be appropriate that the learned trial court concludes this case expeditiously and preferably within a period of 3 months.

 1/10/21

JUDGE