

PRESENTED ON

22.11.2024

Deputy Registrar

6694

IN THE HIGH COURT OF SINDH AT KARACHI

Bail Before Arrest Application No. /2024.

1. Amjad Khan
2. Sajid Khan

Both Sons of Naik Muhammad
Muslim, Adults, R/O Quarter No.14,
Block-7, Kharadar Police Line,
Karachi.....Applicants/accused.

VERSUS

The StateRespondent.

FIR. No.379/2024.
U/S 324/337-A(i), 337/A-(ii)
/504/34 P.P.C.
P.S. Kharadar.

BAIL BEFORE ARREST APPLICATION
UNDER SECTION 498 Cr.P.C.



THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 2734 of 2024

96

Applicants : Amjad Khan & Sajid Khan
through Mr. Muhammad Aziz
Khan, advocate a/w applicants.

Respondent : The State
Mr. Qamaruddin Nohri,
Deputy Prosecutor General

Complainant : In person.

Date of hearing : 17th March, 2025

Date of Order : 17th March, 2025

ORDER

Jan Ali Junejo, J.-- The applicant/accused has filed the present criminal bail application seeking post-arrest bail in connection with FIR No.379 of 2024, registered at P.S. Kharadar, Karachi, under Sections 324/337-A(i)/ 337-A(ii)/504/34, of the Pakistan Penal Code (PPC). Initially, the applicant/accused approached the learned Sessions Court, through Bail Application No.3774 /2024, which was dismissed vide Order dated: 20.11.2024 passed by the Court of learned IXth Additional Sessions Judge, Karachi-South.



2. The facts relevant to the present Criminal Bail Application are as follows:

"The FIR (First Information Report) was filed by Muhammad Farooq Khan, son of Haji Abdul Sattar Khan, a retired police officer residing at Block No. 7, Quarter No. 10, Kharadar Police Line, Karachi. The complainant alleges that on 26-09-2024, two brothers, Amjad and Sajid, sons of Naik Muhammad,

attempted to kill him. The dispute arose over the installation of a water pump on the roof of a shop adjacent to his house, which the brothers used to access by climbing over his roof. Farooq Khan had previously asked them to relocate the pump to a common area and refrain from crossing his roof. The complainant recounts a prior incident in 2017 when the accused allegedly broke into his house and assaulted his wife and a child. On 26-09-2024, at around 2:10 p.m., Amjad climbed onto his roof, and when confronted, he verbally abused and threatened to kill Farooq Khan. Amjad allegedly grabbed the complainant by the throat, dragged him, and physically assaulted him, causing a severe head injury and external wounds. During the altercation, Amjad's elder brother, Sajid, joined in and further assaulted the complainant. Farooq Khan managed to escape and sought help from his son, Siddique, who contacted the police helpline (15). The complainant filed a report at Kharadar Police Station, obtained a medico-legal (ML) letter, and received treatment at Civil Hospital Karachi on 02-10-2024. His injuries were documented as Shajah-Madihya (a type of injury). He also filed a CMA No.3645/24 in the Court of ADJ IX, following which he was directed to the police station to register the FIR. Farooq Khan accuses Amjad and Sajid of intentionally causing him harm with the intent to kill and demands legal action against them. The FIR seeks justice for the physical assault and threats to his life".



3. The learned counsel for the applicants argued that the accused are innocent and have no prior criminal record, asserting that the complainant, a former Head Moharrar at the police station, fabricated the FIR with malafide intent and police collusion to falsely implicate them. He highlighted the

unexplained delay of over one month in lodging the FIR (incident on 26.09.2024, FIR on 04.11.2024) and alleged that the complainant manipulated the medico-legal report (MLO) and consulted legal counsel before recording the statement under Section 154 Cr.P.C., as evidenced in Criminal Misc. Application No. 3645/2024. The counsel further contended that the complainant failed to name any eyewitnesses in the FIR and later introduced false witnesses, casting doubt on the prosecution's case. He emphasized that the alleged offense carries a maximum punishment of three years, and Section 324 P.P.C. does not apply, making the case fall outside the prohibitory clause of Section 497 Cr.P.C. The applicants, described as law-abiding and respectable citizens, argued that continuous police raids at their residence are intended to humiliate and disgrace them. He assured the court of their cooperation with the investigation and willingness to appear as required. The counsel also criticized the lower Court's impugned order for being non-speaking and failing to address relevant case law (e.g., PLD 2021 S.C. 708 and 2022 SCMR 624), which supports bail even in more serious offenses. Lastly, the learned counsel for Applicants prayed for the grant of pre-arrest bail in the interest of justice.



4. The learned DPG opposed the bail application, arguing that the accused are serious and supported by the complainant's medico-legal report, which confirms injuries consistent with the FIR. The DPG rebutted the claim of delay in filing the FIR as inconsequential, asserting that the complainant was undergoing treatment and legal formalities during the intervening period. He countered the applicants' innocence claim by highlighting the gravity of the offense and the complainant's detailed account of the assault. The DPG argued that the absence of eyewitnesses in the FIR does not undermine

the case, as the complainant's testimony and medical evidence are sufficient to establish a prima facie case. He also refuted the applicants' claim of police malafide, stating that the raids were part of a legitimate investigation. The DPG emphasized that the accused's reputation and social standing do not absolve them of criminal liability, and the Court should not grant bail without thorough inquiry. He, lastly, prayed for the dismissal of the bail application, urging the Court to allow the investigation to proceed unimpeded.

5. I have carefully considered the arguments presented by the learned counsel for the Applicant/Accused as well as the learned Additional Prosecutor General. Additionally, I have examined the material available on record with the utmost care and judicial prudence, keeping in view the principle of tentative assessment. Upon such assessment, it is evident that the complainant is alleged to have sustained simple injuries, which fall under the purview of Sections 337-A(i) and 337-A(ii) of the Pakistan Penal Code (P.P.C.). These provisions do not invoke the prohibitory clause of Section 497(1) of the Criminal Procedure Code (Cr.P.C.), as the injuries are neither grievous nor life-threatening. While the medical report corroborates the complainant's allegations by confirming the injuries, their non-severe nature does not justify the denial of bail. Furthermore, the applicants were not found to be armed with any weapon during the alleged incident. They were empty-handed, which significantly undermines the prosecution's assertion that the accused intended to cause grievous harm or commit murder. The FIR was lodged with a delay of over one month (incident on 26-9-2024, FIR on 04-11-2024), and the complainant has failed to provide a satisfactory explanation for this delay. Such a delay often raises doubts about the credibility of the allegations and suggests the possibility of fabrication or



exaggeration. Additionally, it remains to be determined during the trial whether the elements of Section 324, P.P.C. are met in this case. Consequently, the matter necessitates further inquiry under Section 497(2), Cr.P.C. The applicants have alleged that the complainant, a former Head Moharrar, colluded with the police to falsely implicate them. The repeated police raids on their residence, conducted without substantial evidence, lend credence to their claim of police malafide. Upon a tentative assessment of the available evidence, it is clear that the case against the applicants requires further inquiry under Section 497(2), Cr.P.C. The applicants were unarmed during the incident, and the complainant's injuries are of a non-grievous nature, which does not trigger the prohibitory clause of Section 497(1), Cr.P.C. The delay in registration of the FIR, the absence of eyewitnesses, and the allegations of police malafide further strengthen the case for granting bail at this stage. In similar circumstances, the Honorable Supreme Court of Pakistan, in the case of *Khair Muhammad and another v. The State through P.G. Punjab and another* (2021 SCMR 130), confirmed the ad-interim pre-arrest bail of the accused and co-accused. Reliance is also placed on the cases reported as 2012 YLR 1615 and 2012 YLR 249, which support the grant of bail in analogous situations.



6. For the reasons outlined above, the ad-interim pre-arrest bail granted to the applicants by this Court vide Order dated 22-11-2024 is hereby confirmed, subject to the same terms and conditions previously imposed. It is expressly clarified that the observations and conclusions rendered in this order are strictly limited to the disposal of the present bail application and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or

defense—during the trial proceedings. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage.



[Signature]
JUDGE

THE HIGH COURT OF SINDH, KARACHI
CERTIFIED TO BE TRUE COPY

[Signature]
(MUHAMMAD SARFARAZ)
J/C: ASSISTANT REGISTRAR (COPYING)

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