

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. B.A. No. S- 722 of 2013

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing

02.01.2014

Mr. Mian Mumtaz Rabbani Advocate for the applicant.
Mr. Sardar Ai Shah, APG for the State.

O R D E R

Nazar Akbar J., The applicant/accused Nadeem Ahmed Mahessar through this bail application, seeks release on bail in Crime No. 140 of 2013 registered with Police Station A-section, Sukkur, under sections 324, 337F(v) (vi), 114 and 34 PPC.

2. Briefly stated, the case against the applicant/accused in the FIR is that he along with co-accused Abdul Wahab fired on the legs of brother of complainant, namely, Rahim Bux on 20.09.2013 at 2:30 pm, however, FIR was lodged on 08.10.2013 at 7:00 pm about the incident with the police station A-section, Sukkur. The motive of offence is said to be matrimonial dispute between the complainant and accused party. The applicant was arrested on 03.12.2013 and applied for bail before the trial court which was rejected by order dated 12.12.2013, thereafter the applicant has approached this court for grant of bail.

3. Heard learned counsel for the applicant as well as learned APG for the State. Police papers are available with learned APG. Mr. Ubedullah Malano has also filed power on behalf of complainant and sought time on the ground that he has been engaged only yesterday.

4. Learned counsel for the applicant contended that the applicant has been implicated due to matrimonial dispute and the very fact that delay of 18 days in lodging of FIR is sufficient ground to appreciate mala fide of complainant party to settle the family dispute. He further contended that as per medical report, injury attracts provision of sections 337F(v) and (vi) PPC and even if the case is proved, it does not fall within prohibitory clause of section 497 CrPC as the maximum punishment of sections 337F(v) and (vi) PPC is 05 and 07 years. The

prosecution witnesses are relatives of complainant and no independent witness from the crime scene is mentioned in the challan.

5. Learned APG for the State though opposed this bail application, however, he has no answer to the proposition that despite arrest of applicant since 03.12.2013 there is no recovery of alleged weapon used in the offence by the applicant. There is also no report of any recovery of empties from the spot. He confirms that so far as the medical report of injuries, at the best, the case falls under sections 337F(v) and (vi) PPC and the offence is punishable for 05 and 07 years and therefore, does not come within the prohibitory clause and there is also no explanation of delay in lodging the FI R.

6. Mr. Ubedullah Malano has also made submissions to oppose the bail. He has drawn attention of this court to the order of trial court whereby bail was rejected. He has read out certain observations of the trial court from bail order. However, he, too, has no answer to the effect of delay of 18 days in lodging of FIR and the medical report for tentative assessment of case at bail stage. Mr. Malano has referred to following part from the order of the trial court:

".....Regarding which medical certificate issued by Dr. Shahid Iqbal Senior Medical Officer, G.M.C, Hospital Sukkur show that there are bone fractures at both legs of injured Raheem Bux and are caused by fire arm shots which are no doubt issued by the applicant/accused and co-accused and due to that bone fracture of both legs and other injuries, he can be disable for life also, and shall lead miserable life, besides, the statements under section 161 Cr.PC have fully supported the version of FIR with specific role of present applicant/accused Nadeem Ahmed that he caused fire arm injuries to PW Raheem Bux".

7. Though every bail application has to be examined by each court on the touchstone of requirement of section 497 CrPC without being influenced by other court. However, since Mr. Ubedullah Malano, counsel for the complainant has referred to trial court's order to oppose this bail application. I have purposely reproduced the relevant part of trial court order as I feel it necessary to point out that the language of the trial court in refusing bail to the applicant is devoid of judicial approach of the court at the stage of bail. The court is supposed to examine facts and circumstances of each case and tentatively assess the evidence within the parameters of section 497 CrPC. Unfortunately, the

order of the trial court, reproduced above and relied upon by Mr. Malano, is couched in the language of final determination of guilt of accused. There is hardly any need of examining the statements of PWs under section 161 CrPC at the stage of bail as the said statements have no evidentiary value unless they are being subjected to cross-examination. But the trial court in bail order has already declared that the court has "no doubt" that accused have caused fire arms shots and the statements of PWs under section 161 CrPC have fully supported the version of the FIR. Then what is left for the court to go for trial.

8. Lastly, Mr. Malano has also tried to assert that section 324 PPC is also mentioned in the FIR without realizing that medical report clearly indicates that alleged injuries are not on the vital part of body of the injured. Therefore, this is pre-mature to take the case from sections 337F(v) and (vi) PPC to section 324 PPC at bail stage.

9. The cordial principle of criminal law that every accused person is presumed to be innocent unless found guilty by a competent court has been violated when the learned trial court in bail order has made strong observation even before the start of trial. Simultaneously, the trial court's failure to refer to the provisions section 497 Cr.P.C for refusing the bail, the court has violated the universally accepted principle that grant of bail is a rule while refusal is an exception and changed this principle to be read as "refusal of bail is a rule and grant of bail is an exception".

10. In view of the above facts and circumstances, the applicant/accused has made out a case for grant of bail since the grant of bail is a rule and refusal is an exception. The applicant/accused Nadeem Ahmed is admitted to bail subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two hundred thousands) with personal bond in the like amount to the satisfaction of the trial court.

JUDGE

Approved for reporting.

JUDGE