

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

CrI. Bail Appln. No. S- 67 of 2014.

Date of hearing	Order with signature of Judge
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27.05.2015.

For hearing.

Mr. Habibullah Ghouri, Advocate for applicant.

Mr. Ashfaque Hussain Abro, Advocate for complainant.

Mr. Khadim Hussain Khooharo, D.P.G.

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**Nazar Akbar- J:** This bail application was filed on 07.2.2014 in Crime No.100/2011 of P.S Sijawal, registered under Sections 324, 148, 149, 337-H (2) P.P.C. The accused was arrested on **18.2.2013**. Earlier bail application filed before the trial Court was dismissed by the Court of learned Sessions Judge, Kamber-Shahdadkot, by order dated 21.01.2014. The only ground on which the bail has been refused by the trial Court was that the prosecution has claimed that several cases were pending against the applicant/ accused and even a reward of Rs.500,000/- was allegedly fixed for apprehending the applicant/ accused.

Learned counsel for the prosecution till date has not been able to produce any satisfactory record showing the involvement of accused in several crimes. On the last date of hearing this case was adjourned on the ground that the counsel for the applicant should produce record of status of cases pending in different Courts against the applicant. A statement has been filed by learned

counsel for the applicant whereby accused has been shown as involved in **Crime No.05/2013** of P.S A-Section Shahdadkot. However, in the said crime Assistant Sessions Judge, Shahdadkot has already acquitted the accused by judgment dated 15.4.2013, and no appeal against the acquittal has been preferred by the State. In second case bearing crime No.99/2011 of P.S Sijawal under Section 302, 324 P.P.C, the accused is already on bail by this Court by order dated 19.8.2013, in Crl. Bail Appln. No. 238/2013, and in the third case arising out of Crime No.107/2011 P.S Sijawal under Sections 402, 399, 353, 324 P.P.C, the accused is on bail granted by Additional Sessions Judge, Shahdadkot on 01.10.2013. According to the counsel for the applicant except the present case the accused is not involved in any other case, except three aforesaid cases.

Learned D.P.G. has repeated the only arguments, which the trial Court has discussed for refusing bail, despite the observation of the trial Court that the role assigned to the applicant regarding injury caused to the victim has been declared by Medical Officer as injury which constitute an offence punishable under Section 337-F (ii) P.P.C. Learned Counsel for complainant stressed on the Section 324 P.P.C to claim that punishment is ten years in addition to the punishment of offence under Section 337-F (ii) P.P.C which is three years. He, therefore, contends that the offence does not fall within the prohibitory clause of Section 497 (1) Cr.P.C. He has relied on the following case law:

1. PLD 1997 Supreme Court 545 (Imtiaz Ahmed and another v. The State).
2. 1999 P.Cr.L.J 1348 (Shabeer Ahmed alias Shibli v. The State).

3. 2009 P.Cr.L.J 405 (Bukhshu v. The State and another).
4. 2010 P.Cr.L.J 1458 (Shahnawa and 2 others v. The State).
5. 1998 SD 32 (Muhammad Sarwar and others v. The State).
6. NLR 1999 Criminal 9 (Muhammad Nawaz v. The State).

Since 07.12.2014, the prosecution has failed to submit their claim of involvement of the applicant in more than three cases besides this case in which the applicant has been acquitted or he is on bail. This position has not been controverted by the counsel for the complainant and the learned D.P.G. Mere bald statement in the Court that the accused is hardened criminal without any supporting document even in the police file is not sufficient ground to refuse bail, if the case of accused is otherwise is made out for grant of bail. Learned counsel for the applicant claims that by now applicant is behind the bar for more than two years and the role assigned in the F.I.R is about single gun shot injury caused by applicant to one Waqar Ali which has been declared by the medical officer as an injury falling under Section 337-F (ii) P.P.C. and the punishment for such offence is three years. Learned counsel has relied on the case laws reported in **1999 P.Cr.L.J-140** (*Saleem Khan v. The State*), and **1994 P.Cr.L.J-1769** (*Master Dur Muhammad and 2 others V. The State*).

In the case reported in 1999 P.Cr.L.J 140, bail was granted to the accused on the ground that the injuries were on non vital part of the body, which prima-facie has shown lack of intention of accused to cause Qatl-e-Amd and the question of applicability of Section 324 P.P.C as mentioned in the F.I.R was to be determined at the trial after examination of complainant and prosecution

witnesses. In this citation several case laws have been discussed by my lord Mr. Justice Muhammad Roshan Essani as he then was and granted bail after considering all aspect of the case, amongst other, on the ground that alleged injury caused to the victim was not on the vital part of the body. In the case reported in 1994 P.Cr.L.J, even bail before arrest was granted and confirmed on the ground that injuries sustained by the complainant were on non vital part of the body.

In view of the above citations and the facts of the case that the applicant/accused has cause only one injury, though he was in a position to cause more grievous injuries, in my humble view it is pre mature to take the case of accused from Section 337-F (ii) P.P.C to Section 324 P.P.C at the bail stage. Therefore, the case law relied upon by the counsel for the complainant in which stress is on the refusal to grant bail in case of offence under Section 324 P.P.C are not attracted in the facts of the case in hand.

In view of the above discussion, the applicant is admitted to bail in the sum of Rs.200,000/- (Two hundred thousand rupees) with P.R bond in the like amount to the satisfaction of trial Court.

Judge