

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl.B.A.No. S-316 of 2019

Applicant: Ghulam Mujtaba Lakho
Through Mr. Muhammad Raza Soomro
Advocate.

Complainant: Safdar Ali Sahito, called absent.

The State: Through Mr. A.R. Kolachi DPG.

Date of Hearing: 24th June, 2019.

ORDER

Adnan-ul-Karim Memon, J- Applicant Ghulam Mujtaba Lakho is seeking Pre-arrest Bail in Crime No.48/2019, registered for offence under section 337Ai, 337Fi, 506/2, 147, 148, 149, PPC at Police Station 'A' Section, Gambat.

2. The prosecution has set up a case against the Applicant on the premise that on 24.5.2019 at about 0430 hours applicant along with his accomplices armed with pistols and lathies assaulted him and caused grievous injuries on his body. Such incident was reported at Police Station 'A' Section, Gambat, consequently an F.I.R No.48/2019 was registered against the applicant and his perpetrators, for offence under section 337Ai, 337Fi, 506/2, 147, 148, 149, PPC. Investigating Officer recorded statements of prosecution witnesses. Finally, Investigating Officer submitted his report before the concerned Court. The Applicant moved pre- arrest Bail Application No.1057 of 2019, before the learned Trial Court, which was dismissed vide Order dated 30.5.2019. The Applicant being aggrieved by and dissatisfied with the rejection of his Bail Application approached this Court on 31.05.2019, and ad-interim Bail was granted to him vide order dated 31.5.2019 and since then he is on interim Bail.

3. Mr. Muhammad Raza Soomro learned counsel for the applicant has argued that the applicant is innocent and has been falsely implicated in this case on the plea that he caused injury to the complainant/victim and issued threats on the contrary there is nothing on record to suggest that anything has happened as portrayed by the complainant in the aforesaid F.I.R; that all Sections are bail able except Section 506/2, PPC and punishment provided for the said offence does not fall within the prohibitory clause of Section 497 (2) Cr.P.C; that learned trial Court has wrongly declined pre-arrest bail to the applicant on the premise that he failed to join investigation though the entire case requires further enquiry into the guilt of the applicant; that applicant is implicated by complainant with malafide intention over of civil dispute pending between the parties, therefore the applicant is entitled to concession of Pre-arrest bail; that police is behind the applicant and there is grave apprehension that if he is arrested, he will be humiliated, disgraced and tortured at the hands of police, at the behest of complainant, therefore he has approached this Court for grant of pre-arrest bail in the aforesaid crime. He lastly prayed for confirmation of interim pre-arrest.

4. Conversely, learned DPG states that he has no objection for confirmation of bail of the Applicant.

5. I have noticed that this Court issued notices to the complainant to defend his case but he deliberately avoided to appear, despite of service held good upon him by the process server vide his report dated 24.06.2019 therefore this Court is left with no option but to hear this bail application in presence of the learned Counsel for the Applicant and learned DPG representing The State.

6. I have heard the learned Counsel for the parties at length and perused the material available on record.

7. Before deciding the pre-arrest bail matter on merit, which is an injury case, I am cognizant of the fact that, while deciding a Bail Application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C. nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant law have to be considered. I am well aware of the fact that the grant of pre-arrest Bail is an extra ordinary relief which is extended in exceptional circumstances when glaring malafide is shown on the part of prosecution to cause unjustified harassment and humiliation of person in case of his arrest.

8. The tentative assessment of record explicitly shows that the aforesaid injury, attributed to the Applicant was reported to be Shajjah-i-Khafifah (337-Ai PPC) and Ghayr-Jaifah (337-Fi PPC), punishable for imprisonment of certain terms, thus, it appears that the case against applicant does not fall within the prohibitory clause of section 497(1) Cr.P.C; however, looking to the whole episode as narrated in the FIR, the applicability of the aforesaid sections of PPC also needs complete determination by the learned trial Court. Even otherwise, it appears from the record that injuries sustained by the victim requires thoroughly scrutiny during trial, till then, the case of the applicant required further probe. Prosecution states that in this matter investigation has been completed and interim challan against applicant and others has already been submitted before the learned trial Court and the applicant is no more required for further investigation. No exceptional circumstance appears in this case to withhold bail of the applicant at this stage. I am of the view that to curtail the liberty of a person is a serious step in law, therefore, the learned Presiding Officers of the subordinate Courts shall apply judicial mind with deep thought for reaching at a fair and proper

conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised by the learned Judges of the subordinate Courts in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with certain terms of punishment as provided under P.P.C. The learned Presiding Officers are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.

9. I have noticed that the Rule of consistency, which is also applicable in the present case, for the simple reason that, if the order granting bail to an accused by the trial Court is supported by valid reasons, the same can form the basis for granting bail to a co-accused on the ground of parity and this Court can grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains valid reasons, while considering the relevant factors essential for granting Bail. Admittedly, the applicant is previous non-convict; therefore, no useful purpose would be served by sending him behind the bars.

10. In view of the above facts and circumstances of the case, since malafide or ulterior motive on the part of complainant has been alleged

by the applicant, So far as the role of causing injury on the person of the complainant is concerned, it is admitted position that the said injury was reported to be Shajjah-i-Khafifah and Ghayr-Jaifah. Therefore I am of the tentative opinion that Applicant has made out a case for grant of Pre-arrest Bail at this stage on the aforesaid pleas.

11. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the witnesses within a period of three months and conclude the trial after completing all codal formalities, in accordance with law and in the meanwhile, if the Applicant fails to appear before the learned trial Court, his Bail may be cancelled by the learned trial Court without obtaining any order from this Court. It is expected from the learned trial Court that the direction of this Court, particularly in the Bail matters shall be adhered to and valid reasons are to be assigned, if the trial is not concluded within the stipulated time.

12. These are the reasons of a short order dated 24.6.2019, whereby this bail application was allowed and interim pre-arrest bail granted to the applicant in the aforesaid crime vide order dated 31.05.2019, was confirmed on the same terms and condition.

JUDGE

Akber.