

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 62 of 2018

Date	Order with Signature of the Judge
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1. For orders on office objection at "A".
2. For hearing of Bail Application.

For Applicant : M/s. Muhammad Mohsin Khan and Faizan Peshimam, Advocates.

For complainant : Mr. Shoukat Ali Bhambhro, Advocate.

For State : Dewan Bhuromal, D.D.P.P

Heard on : 21.02.2018

Decided on : 06.03.2018

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 1597/2017, by the trial Court, vide order dated 26.12.2017, the applicant Nawaz Hussain son of Jahania has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 222/2017, under Section 452, 324, 34 PPC, registered at P.S. Ibrahim Hyderi, Karachi.

2. Story of the prosecution in nutshell is that complainant Mst. Naseem Bibi recorded her statement under Section 154 Cr.PC at Jinnah Hospital, Karachi to ASI Malik Mohammad Aslam of PS Ibrahim Hyderi on 12.11.2017, at 0015 hours, which was incorporated into FIR, stating therein that she resides with her mother at the given address, today, she and her mother widow of Haider Ali were present in the house, when at about 7.30 pm, the door of the house was opened, three persons barged into their house. The said perpetrators were the same persons who already involved in civil litigation against the complainant. They warned them to vacate the premises otherwise, they would kill them. Meanwhile, Nawaz son of Jahania pointed the gun at her so she ran to towards inside the room in order to save her life. The other perpetrator, Nawaz son of knot known was previously supporting them in said property dispute. He and his fellowman Shahid Malik attempted to shoot fires on them. Consequently, her mother got bullet short in her stomach, which caused excessive blood loss, therefore, she is undergoing surgery in Jinnah Hospital. She saw three persons while committing this crime and she can identify

them by their faces and their names to. She wants to take legal action against the said individuals namely, Nawaz son of Jahania, Shahid Malik and Nawaz S/o not known, by lodging FIR against them their act of attempting to kill them with the use of firearms.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and law abiding citizen and is aged about 50 years. The complainant with malafide intention and ulterior motives and in order to pressurizing the accused over his claim of the property i.e. E-757, Bhattai Colony, which Suit No. 292/2017 is pending before the II-Senior Civil Judge, Karachi Malir. He further argued that the complainant Naseem Bibi previously initiated proceedings against the applicant/accused by filing Illegal Dispossession Complaint before the III-Additional Sessions Judge, Malir, which was dismissed on 30.05.2011 on merits. Learned counsel for the applicant/accused has further argued that place of incident is residential area but the complainant/prosecution has failed to associate any witness in her support. Learned counsel has pointed out that statements of complainant and her mother U/s. 161 Cr.PC are contradictory recorded by the I.O as according to complainant Nawaz son of Jahania pointed the gun at her and she ran to the other room in order to save her life and the accused Nawaz son of Imam and his fellowman Shahid Malik attempted to shoot bullets on them and in the process of which they shot her mother straight in the stomach, while the mother of complainant stated that the fire was made by the Nawaz Jahania to her. According to learned counsel for the applicant/accused neighbor and closed residents have refused to hear any sound of fire shot from the complainant's house as well as they denied to see any person entering her premises. Learned counsel has relied upon the case reported in PLD 2003 SC 171 wherein the Hon'ble Supreme Court held that while confirming the pre-arrest bail "the chance of petitioners, having been involved due to the dispute over the property cannot be ruled out at bail stage". According to the learned Additional Sessions Judge has ignored the said ruling of Apex Court. He has also taken the plea of alibi as according to affidavits of four deponents executed in favor of the applicant/accused, he was in the Masjid when this incident took place. Learned counsel for the applicant/accused has further argued that the complainant and her mother are habitual criminals and used the law and Courts as a

tool and shelter for their evil objects. According to him, three ingredients in commission of offences under section 324 & 452 are to be present i.e. 1) knowledge, 2) commission and 3) intention but these ingredients are missing in the present case. He has further taken plea that nothing was recovered from the accused, so this case is fit for further inquiry and applicant/accused is entitled for bail. In support of his contention he placed reliance upon the cases of Manzoor Hussain Wassan Vs. The State (1992 MLD 1607 Karachi), Muhammad Naqi Vs. The State (1991 P.Cr.L.J 1368 Karachi), Sajeel Rashid & another Vs. The State (PLD 2003 SC 171), Hafiz Muhammad Ashraf Vs. The State (2004 YLR 2126 Lahore), Ali Sher Vs. The State (2015 SCMR 142 SC), Wahid Bakhsh Khoso Vs. The State (2006 MLD 507 Karachi) and Riasat Ali Vs. The State (2013 YLR 272 Lahore).

4. Learned D.D.P.P has strongly opposed the bail application on the ground that the complainant has disclosed the specific role of the applicant/accused in her FIR by stating that the applicant/accused has attempted to commit their murder. The complainant's mother has received bullet injury on her abdomen and MLC of her mother is on record which shows that the mother of the complainant was unconscious when she brought at JPMC. Injured (mother of complainant) and complainant were present in Court and the injured showed her injury before the Court, therefore, the applicant/accused is not entitled for concession of bail.

5. After hearing arguments and perusal of record it reveals that the accused has been nominated in the FIR and the complainant had disclosed the specific role of the applicant/accused in her FIR by disclosing that the applicant/accused has pointed gun at her and she ran to other room in order to save her life while her mother received bullet injury on her body. She stated in her statement U/s. 161 Cr.PC that the present applicant/accused fired upon her and she received bullet injury on her abdomen. Admittedly, there is a civil dispute between the parties in respect of the property and litigation is pending before the court of learned Senior Civil Judge, Malir and one case regarding Illegal Dispossession filed by the complainant side against the accused person has already disposed of in favor of the applicant/accused. Report of trial court was called by this court, which shows that one of the

accused Nawaz son of Imam is absconder in this crime therefore, the trial court is initiating formal proceedings against him and after completion of that the trial will be started and thereafter the evidence of the complainant and her mother will be recorded. At this stage when statement of complainant and her injured mother has not been recorded by the trial court it cannot be ascertained that whether the present crime is false and applicant/accused is innocent. Let the statement of complainant, who is the eye witness of the incident and her mother who is injured as well as eye witness of this incident, therefore, it would be expedient that after recording their statements by the trial court, it would be cleared that whether the applicant/accused is innocent or guilty. Till such time accused cannot be set at liberty as the apprehension of mis-using or pressurizing the complainant side cannot be ruled out, hence, at this stage when the trial is to be started bail application of the applicant/accused cannot be considered.

6. Whatever mentioned above, I reached at the irresistible conclusion that in current situation the applicant is not entitled for grant of bail. Consequently, the instant bail application is dismissed.

7. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

J U D G E