

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1238 of 2020

Applicants : Kashif Shabbir S/o Shabbir Ahmed Arif
Through Mr. Abdul Majeed Khoso,
Advocate

Complainant : Asif Ai Bani S/o Noor Muhammad Ai
Bani
Through Mr. Sarmad Hani, Advocate

Respondent : The State
Through Mr. Sagheer Ahmed Abbasi,
Assistant Prosecutor General, Sindh

Criminal Bail Application No.1241 of 2020

Applicants : i) Rizwan Riaz S/o Muhammad Riaz
ii) Imran Khan S/o Muhammad Riaz
iii) Kamran Khan S/o Muhammad
Riaz
Through Mr. Asadullah Memon,
Advocate

Complainant : Asif Ai Bani S/o Noor Muhammad Ai
Bani
Through Mr. Sarmad Hani, Advocate

Respondent : The State
Through Mr. Sagheer Ahmed Abbasi,
Assistant Prosecutor General, Sindh

Date of hearing : 01.09.2020

Date of order : 01.09.2020

ORDER

AMJAD ALI SAHITO, J – Through a single order, I intend to dispose of two bail applications cited above filed by the applicants/accused seeking pre-arrest bail in Crime No.205/2020 registered under Sections 324, 506, 34 PPC at PS Malir Cant. Karachi, after their bail plea has been declined

by 3rd Additional Sessions Judge, Malir Karachi vide order dated 13.08.2020.

2. The details and particulars of the FIR are already available in the bail applications and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused in Crl. B.A. No.1238/2020 has argued that applicant/accused is innocent and has falsely been implicated in this case; that no role has been assigned against the applicant/accused but the only allegation that he has shared the common intention in the alleged offence, which needs to be decided at the trial whether he has shared the common intention or not. He pleaded *mala fide* on the part of the complainant. He lastly prays for confirmation of bail.

4. Learned counsel for the applicants/accused in Crl. B.A. No.1241/2020 has mainly argued that the applicants/accused are innocent and have falsely been implicated in this case; that the names of the applicants/accused appeared in the FIR but no specific role has been assigned against them; that from the face of FIR, it appears that enmity exists between the parties; hence false implication cannot be ruled out; that there were two versions in 161 Cr.P.C. statement of the complainant which is yet to be determined which version may be presumed as correct and true; that the case is disposed of under "C" class and learned Magistrate ordered a further investigation; that as per CDR report, complainant party was not present at the place of incident. He lastly prays for confirmation of bail to the applicants/accused. In support of his contentions, learned counsel for the applicant/accused has relied upon an

unreported case of this Court passed in CrI. B.A. No.180/2019 dated 27.06.2019.

5. On the other hand, learned counsel for the complainant has vehemently opposed for confirmation of bail to the applicants/accused on the ground that accused Rizwan Riaz requested the complainant for investment and subsequently, he invested amount of Rs.8.5 Carore and when the accused failed to pay the said amount, he has given a cheque to the complainant and on presentation of the said cheque, it was found bounced; hence an FIR being Crime No.222/2019 was registered and another FIR being Crime No.235/2019 was also registered against the said accused. He has further argued that thereafter accused party attacked the son of the complainant hence FIR being Crime No.256/2019 was lodged. Thereafter, another cheque was given by a relative of accused namely Atif Shabbir, who is absconder in FIR No.627/2019; that when the bail application of accused Rizwan Riaz was dismissed by the trial Court then the said accused approached the complainant and entered into a compromise with some mutual settlement and undertook to pay the invested amount of the complainant but so far they have not paid the same. Thereafter, the complainant filed a suit before the trial Court which was fixed for evidence; however, two days before the date of evidence, they attacked upon the complainant party which caused serious injuries to them. He lastly contended that the Station Headquarters, Malir Cantt. has also cancelled NOC issued to the applicants/accused which shows that they are habitual offender; that the motive is clear that the applicants wanted to pressurize the complainant party. In support of his contention, learned counsel for the complainant has relied upon the cases (1) Gulshan Ali Solangi and others v. The State (2020 SCMR 249), (2) Abdul Aziz Memon v. The State (2020 SCMR 313), (3) Riaz Ahmad v. The State (2009 SCMR 725).

6. Learned APG has also opposed for confirmation of bail on the ground that specific allegation is mentioned against Rizwan Riaz and Imran Khan; however, he admits that no role has been assigned against Kamran Riaz and Kashif Shabbir.

7. I have heard the learned counsel for the parties and have gone through the material available on record. The case of the prosecution is that on the day of the incident when the complainant along with his wife left his house for Ojha Hospital. At about 0930 hours, when they arrived at Sindh Police Society Road opposite Memon Graveyard, from behind two Corolla cars and one motorcycle whereupon two persons were riding stopped them and pointed out the pistol upon the complainant and his wife. The 161 Cr.P.C. statement of wife of the complainant Aakhani Ibani was recorded in which she has assigned the role upon the accused Rizwan Riaz, who has pressurized the complainant to sign on the empty stamp paper and on refusal, the accused Imran Khan fired upon the complainant and accused Rizwan Riaz given knife/dagger blows to wife of the complainant which hit on her left arm whereby the complainant received three injuries i.e. incised wound of 1x0.8cm skin deep at (L) clavicular region, stab wound of 14x1.5cm on (L) hypodermal region at abdomen and incised wound at 4x0 cm skin deep on posterior surface.

8. The bare reading of section 324 PPC, would confirm that the act of attempt should be with such intention or knowledge and under the circumstances in which the attempt is being made. So, it is obvious that an attempt to commit qatl-e-amd there must be ***mens era*** followed by the act of wrongdoing which if done may cause qatl of the person. The name of the applicants/accused Rizwan Riaz and Imran Khan finds place in the FIR with the specific role that the accused Imran Khan

fired upon the complainant party; whereas the accused Rizwan Riaz has given knife/dragger blows on the vital part of the body of complainant and the arms of his wife. Prima facie section 324 PPC is very much applicable against them. The ocular evidence finds corroboration from the medical evidence. The offence alleged against them falls within the prohibitory clause of section 497(2) Cr.P.C. In this context, reliance is placed in the case of **Ghani Khan v. The State (2020 SCMR 594)**; wherein the Hon'ble Supreme Court of Pakistan has dismissed the bail application of accused filed for an offence under sections 324, 34 PPC. The relevant para of the said order is reproduced hereunder:

“2....It has been observed by us that the petitioner is named in the FIR with specific role of firing at the complainant Hazrat Ullah, which as per the statement of the complainant, hit him on his right thigh and right side of his chest. The said allegation is prima facie supported by the medical evidence. the offence alleged against him falls within the prohibitory clause of section 497(2) Code of Criminal Procedure. In these circumstances he is not entitled to the concession of bail.”

In another case of **Bilal Khan v. The State (2020 SCMR 937)**; wherein the Hon'ble Supreme Court of Pakistan has dismissed the bail application of accused filed for an offence under sections 324, 34 PPC. The relevant para of the said order is reproduced hereunder:

“4...There can be no escape from the fact that the Petitioner is nominated in the FIR with a specific role of causing firearm injury to one Zararullah Khan. The said injured PW has accused the Petitioner and stands by his statement. It is not clear on what basis the Police found the Petitioner innocent. At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. There is sufficient material on record to connect the Petitioner with the crime. The offence falls within the prohibitory clause of section 497, Cr.P.C. in this view of the matter, we are not inclined to grant post-arrest bail to the Petitioner. Hence, this Criminal Petition must fail.”

9. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

10. At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. There is sufficient material available on record to connect the applicants/accused Rizwan Riaz and Imran Khan with the alleged offence. Learned counsel for the applicants/accused has failed to make out a case for grant of pre-arrest bail. Resultantly, the interim pre-arrest bail granted by this Court to applicants/accused **Rizwan Riaz and Imran Khan** vide order dated 17.08.2020 is hereby recalled and the bail application to the extent of above named accused is **dismissed**.

11. Reverting to the case of accused Kashif Shabbir and Kamran Khan, though their names are appearing in the FIR,

no specific role has been assigned against them, mere presence has been shown at the place of incident. Further, both the applicants have not caused any injury to the injured persons. It is yet to be decided whether the applicants/accused have shared their common intention or not when the evidence will be recorded. Learned counsel for the applicants/accused pleaded malafide against the complainant that both the applicants being a witness of the mutual agreement they have been implicated in this case malafidely with ulterior motives. Hence, learned counsel for the above said applicants/accused has made out a case of further enquiry in terms of subsection (2) of section 497 Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to applicants/accused **Kashif Shabbir and Kamran Khan** vide order dated 17.08.2020 is hereby confirmed and their bail application is **allowed**. Applicants/accused are directed to attend the trial as and when required.

12. It is made clear that if applicants/accused misuse the concession of bail, learned trial Court would be at liberty to take appropriate action.

13. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA