

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

1st CrI.B.A.No. S – 383 of 2019.

Date	Order with signature of Judge
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1.For orders on office objections as flag A.

2.For Hearing of Bail Application.

02.09.2019.

Mr.Ashfaque Hussain Chandio, advocate for the applicant.

Mr. Amanullah Luhur, advocate for the complainant.

Mr.Muhammad Noonari, D.P.G.

ORDER

Arshad Hussain Khan, J-Applicant Rasoolo Jafferri has filed this application under Section 497 Cr.P.C seeking post-arrest bail in Crime No.45/2019 of Police Station, Karampur registered for offence under Sections 324, 337-A(i), F(i), 337-H(ii), 506/2, 114, 147, 148, 149 & 504 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that complainant Muhammad Nawaz Bijarani lodged F.I.R on 08.6.2019 at 2130 hours alleging therein that he owns land situated in Deh Karampur and the accused Shah Muhammad and others were saying him to sale out the said land to them to which he party refused on which accused Shah Muhammad and others were annoyed and they had warned that if the complainant party would come to their lands for cultivation, they will be murdered. It is further alleged in the FIR that on 02.6.2019 the complainant alongwith with nephews namely Muhammd Azam, Abdul Basir, Pervaiz Ahmed and Abdul Wahid Bijarani were ploughing their lands on a tractor when at about 1.00 p.m the complainant party saw and identified

the accused namely 1.Shah Muhammad S/O Waryam 2.Bilal 3.Liaquat, 4.Rasoolo, all sons of Saifal armed with guns, 5.Meharullah S/O Waryam armed with K.K 6.Khathoor alias Bhooro with K.K 7.Dost Ali S/O Abdul Raheem armed with K.K, 8.Amanullah S/O Marakh armed with gun all bycaste Jafferi R/O. Near Village Ghulam Rabbani Bijarani Taluka Tangwani and two unidentified persons were with lathies, who were seen properly and they could be identified if seen again, came there from eastern side. While coming, accused Shah Muhammad gave hackale, abused and said that they had restrained them from cultivating the land but they did not pay heed over it, therefore, today they will teach them lesson. Saying so, accused Shah Muhammad instigated other accused persons to teach lesson to the complainant party and on his instigation, accused Bilal made straight fire upon Pervaiz with intention to commit his murder which hit him near his right eye brow, accused Liaquat made straight fire of gun upon Pervaiz with intention to commit his murder which hit him on his forehead, accused **Rasoolo (present applicant)** made straight fire of gun upon Abdul Basit with intention to commit his murder, which hit him on his head from left side, accused Mehrullah made straight fire of K.K upon Muhammad Azam with intention to commit his murder which hit him over hand of his left arm, accused Mehrullah again made straight fire of K.K upon Muhammad Azam which hit under his left side nipple, accused Khathoor alias Bhooro made straight fire of K.K which hit him on backside of knee of left leg, and accused Dost Ali made straight fire of K.K upon Abdul Wahid which hit him on his left hand, who raised screams and fell down raising screams when the unknown accused persons caused lathi blow injuries to Pervaiz Ahmed, Abdul Wahid, Abdul Basit and Muhammad Azam on which complainant party raised cries and gave them names of Holy Quran and then all the accused persons made ariel firing in order to create harassment and warned that if the complainant party lodged any complaint, they will be murdered. Thereafter, at the outcry of complainant and sound of firing, people of neighborhood

reached at the site and seeing them, all the accused persons went away. Thereafter, complainant arranged the conveyance and brought the injured at Police Station and after receiving letter for treatment, shifted the injured to RHC Tangwani from where they were shifted to Larkana Hospital for further treatment. Later on, the complainant appeared at Police Station and lodged the F.I.R against the accused persons to the above effect.

3. After registration of FIR the investigation follow and in due course the present applicant was arrested and sent up to stand trial before the competent Court of law where he moved post arrest bail application, but same was declined by learned Court by order dated 12.7.2019. Thereafter, the applicant/accused has approached this Court seeking post arrest bail.

4. Learned counsel for the applicant during the course of arguments has contended that the applicant is innocent and he has been falsely implicated in the case by the complainant with malafide intentions and ulterior motives on landed dispute. He further contended that the instant FIR has been lodged owing to the dispute in respect of agricultural land. He further argued that all the Sections mentioned in the FIR are bailable in nature except section 324 PPC which is not applicable to the present case as there is no repetition of fire alleged against the present applicant and the firearm injury allegedly sustained by the P.W Abdul Basit on his head from left side at the hands of present applicant has been opined as *shajjah e khafifah* which is bailable. It is further argued that all the P.Ws are closely related interse hence they are inimical to the applicant and interested witnesses and their testimony require corroboration by independent evidence, which is lacking in this case. It is also argued that medical evidence is contradictory to the ocular version as the Medical Certificate does not show any injury on left side head of Abdul Basit. Besides, the version of FIR is not supported by 161 Cr.P.C statements of P.Ws which shows mere presence of present applicant without causing any injury to

complainant party. It is also argued that there is inordinate delay of six days in lodging the FIR without any plausible explanation which reflects that the complainant concocted the story to implicate innocent persons which can not be excluded when there is background of previous enmity between the parties on a landed dispute which is also admitted in the FIR itself. It is also argued that grant of bail does not mean discharge of person from accusation, but only the custody is to be shifted from the jail into the hands of surety as under the law there is no provision for compensation of accused if after termination of trial he would be declared as innocent. On all these scores, learned counsel for the applicant submits the prosecution case against the present applicant calls for further enquiry and he is entitled to the concession of bail.

5. Conversely, the learned D.P.G assisted by the learned counsel for the complainant vehemently opposed the arguments so advanced by the counsel for the applicant and contended that the present applicant is named in the FIR with specific role of causing firearm injury to P.W Abdul Basit, thus applicant/accused is not entitled for concession of bail.

6. I have heard learned Counsel for the parties and also perused the material brought on record.

7. From the perusal of the FIR it appears that except section 324 and 506/2 PPC, all the sections mentioned in the FIR are *bailable*. Insofar as the section 324 PPC is concerned, it is stated in the FIR that applicant/accused allegedly made straight fire upon P.W Abdul Basit which hit on his head from left side, however, the present applicant did not repeat any fire although the said P.W was at the mercy of the applicant/accused. The said act of the accused person *prima facie* reflects that he had no intention to commit murder of injured Abdul Basit which controverts the applicability of section 324 PPC to the case of present applicant. As regards Section 506/2 PPC, although it is

non-bailable yet it does not come within prohibitory clause of section 497 Cr.P.C. Besides, the prosecution case against the present applicant calls for further enquiry on various counts. The injury, allegedly sustained by P.W Abdul Basit, is opined as *shajjah e khafifah* in the Medical Certificate which is bailable. The perusal of Medical Certificate does not show seat of injury on left side head of P.W Abdul Basit. However, in the 161 Cr.P.C statements of P.Ws, no any injury is attributed to the present applicant and mere presence is alleged against him and besides, there is also no disclosure of causing any lathi blows by accused to any of P.Ws which is also contradictory to the version of FIR. It is also noted that the FIR was lodged with inordinate delay of 6 days without plausible explanation. The record also reflects that all the prosecution witnesses are closely related and their testimony can not be taken as gospel truth more particularly when there is previous enmity between the parties on landed dispute as admitted in the FIR itself, therefore, in the background of previous ill will, false implication of present applicant can not be ruled out as the enmity is double edged weapon which cuts both ways. In these circumstances, prima facie, the possibility of mala fide and ulterior motives on the part of the complainant in lodging the instant FIR against the applicant/accused cannot be ruled out and as such the prosecution case against the present applicant calls for further probe.

8. For what has been stated above, I am of the considered view that applicant/accused has made out the case for grant of post-arrest bail. Consequently, applicant/accused is granted post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R bond in the like amount to the satisfaction of trial Court.

9. Needless to say, the observations made here-in-above are tentative in nature and only for the purpose of this bail application. Nothing herein shall affect the determination of the facts at the trial

or influence the Trial Court in reaching its decision on merits of the case.

JUDGE

shabir