

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No. S- 770 of 2021

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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Applicant: Mashooque Ali
through Mr. Muhammad Nawaz B. Jamali,
Advocate

Complainant: Buxo Khan
through Ghazi Salahuddin Panhwar, Advocate

Ms. Safa Hisbani, Assistant P.G Sindh

Date of hearing & decision: 08.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned 2nd Additional Sessions Judge, Badin vide order dated 28.06.2021.

2. The allegation as per FIR against the applicant is that he was being armed with iron rod came along with co-accused who were armed with deadly weapons caused injuries to the son and other relatives of Complainant; such FIR bearing Crime No. 37 of 2021 was registered at police station Dehi District Badin under Section 324, 147, 148, 149, 114, 504, 337-H(ii), 337-A(i), 337-F(i), 337-A(iii), 337-L(ii) PPC.

3. Learned counsel for applicant argued that the applicant is innocent and has falsely been implicated by the Complainant for ulterior motives; that FIR is delayed for 03 days, hence deliberation and consultation of the Complainant party cannot be ruled out; that all the sections applied in the FIR areailable except Section 324 PPC and the applicability of Section 324 PPC shall be proved at trial; that no independent person has been cited as a witness; that as per challan two sections have been added i.e. under Section 337-A(iii), 337-L(ii) and the punishment of Section 337-A(iii) is 10 years, hence

does not fall within the prohibitory clause of Section 497 Cr.P.C. He lastly prayed for confirmation of anticipatory bail granted to the applicant on 6.9.2021 on the same terms and conditions.

4. Learned A.P.G. opposed the bail plea of applicant with vehemence and has argued that the name of the applicant/accused Mashooque Ali is mentioned in the FIR with a specific role that he caused iron rod blow to P.W Din Muhammad on his head and he also repeated the iron rod blow on his neck and so also other parts of the body, as such, the applicability of section 324 PPC is apparent from the extravagant act of the applicant. The medical evidence is also in line with the ocular evidence. The P.Ws in their 161 Cr.P.C. statements have supported the version of the FIR; that extraordinary concession is not available to the applicant which is meant to save innocent and not the people like applicant and that Medico-legal Report (MLR) supports the version of Complainant / injured witnesses, therefore, the applicant is not entitled to the concession of pre-arrest bail; that the grounds taken by the applicant are not only beside the mark but also cannot be attended without undertaking an in-depth analysis of the prosecution case, an exercise forbidden by law at the bail stage. It is urged that no indulgence of this court is required under such circumstances.

5. I have heard learned counsel for the parties and gone through the record.

6. The Honorable Supreme Court in the recent judgment in pre-arrest bail matters has held that judicial protection is based on equity and cannot be extended in every run-of-the-mill criminal case founded upon incriminatory evidence, warranting custody for investigative purposes. Primarily, the remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of the Honorable Supreme Court rendered in the case of Gulshan Ali Solangi and others v. The State through P.G. Sindh (2020 SCMR 249)

7. The Honorable Supreme Court in its various pronouncements has held that murderous assault as defined in section 324 PPC draws no anatomical distinction between vital or non-vital parts of the human body; that once an assault is made and the victim is

effectively targeted intention or knowledge; as contemplated by the section 324 PPC is manifested; the course of such assault is not controlled or steered by the assailant's choice nor can he claim any premium for poor assault.

8. Prima-facie, the applicant cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially includes an arrest to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offense through the collection of information/ evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary be all mean, which is not the case in hand.

9. Primarily, there is a prime distinction between pre-arrest and post-arrest bail. Pre-arrest is an extra-ordinary remedy while post-arrest is an ordinary remedy. Allegation of involvement of the accused should be mere an allegation tainted with malafide from either side.

10. The facts and circumstances of the present case, prima-facie show that the prosecution version to the extent of sustaining injuries by the injured is still intact; and, on the other hand, opined by the Medico-Legal Officer. Even the Mashirnama of injuries supports the prosecution version. Besides the injuries ascribed to the applicant have been declared falling under the aforesaid sections of the Pakistan Penal Code which entail as per statute maximum punishment of seven to ten years.

11. Keeping in view all the facts and circumstances and while seeking guidance from the judgment of Honorable Supreme Court in the cases of Chaudhry Shujat Hussain v. The State (**1995 SCMR 1249**), Muhammad Umar vs. the State and another (**PLD 2004 Supreme Court 477**), Alam Zeb and another v. State and others (**PLD 2014 S.C. 760**) and Muhammad Sarfraz Ansari. Vs. State and others. (**PLD 2021 SC 738**), I am of the tentative view that the case of the applicant do not fall within the ambit of "further inquiry" falling within the ambit of section 497(2) Cr. P.C, rather there are reasonable grounds for believing that the applicant has participated in the commission of alleged offenses.

12. As a consequence of the facts and circumstances surfaced on the record, I am not persuaded to grant extraordinary relief to the applicant under Section 498 Cr.P.C. The Criminal Bail Application No. S- 770 of 2021 arising out of Crime No.37 / 2021 of police station Dehi District Badin under Section 324, 147, 148, 149, 114, 504, 337-H(ii), 337-A(i), 337-F(i), 337-A(iii), 337-L(ii) PPC, is hereby dismissed. Consequently, interim pre-arrest bail already granted to the applicant, vide order dated 6.9.2021, is hereby recalled.

13. The observation recorded hereinabove is tentative shall not prejudice the case of either party at the trial.

JUDGE

Karar Hussain/PS*