

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Bail Application No.S-331 of 2021

Applicant : Shahnawaz Khan through Mr. Imtiaz Ali
Abbasi, advocate.

Complainant : Ayaz through Mr. Agha Abdul Nabi,
advocate.

The State : Through Ms. Rameshan Oad, A.P.G.

Date of hearing : 6.9.2021.
Date of order : 6.9.2021.

ORDER

KHADIM HUSSAIN TUNIO, J- Through instant criminal bail application, the applicant/accused Shahnawaz Khan seeks pre-arrest bail in Crime No. 19/2021, under Sections 324, 114, 452 and 34 PPC, registered at P.S. Tando Yousaf, Hyderabad after his bail plea had been declined by learned IVth Additional Sessions Judge, Hyderabad vide order dated 16.04.2021.

2. The allegation against applicant is that on 18.02.2021, at about 10:40 P.M., he along with co-accused Adnan, being armed with pistols, entered the house of the complainant and co-accused Adnan allegedly instigated the present applicant to shoot the complainant's son, whereupon Shahnawaz shot upon Mir Hassan with his pistol, hitting him on his right leg. Due to the commotion, people of the neighborhood started gathering which prompted the applicant and co-accused to escape while causing aerial firing. Thereafter, the complainant Ayaz, after shifting his son to the hospital, appeared at Police Station to lodge the instant FIR.

3. Learned counsel for the applicant contended that there are no grounds to believe that the applicant has committed the said offences alleged against him; that the prosecution story is false; that the FIR is delayed by one day which suggests due deliberation and consultation before lodging the same; that the parties are inimical towards each other and complainant's mother also lodged an FIR against the applicant; that the role assigned to applicant is doubtful; that there is a long standing enmity between the parties and even the brother of the applicant was murdered, therefore, false implication cannot be ruled out; that the incident has been fabricated and the applicant was involved falsely to pressurize him after he lodged an FIR against the complainant party regarding the murder of his brother Gulnawaz Pathan; that the complainant party is highly influential over the local police and are also threatening the applicant. He therefore prays for the confirmation of pre-arrest bail for the applicant.

4. Learned counsel for the complainant while vehemently opposing the grant of bail to the applicant argued that the applicant has been named in the FIR with the specific role; that sufficient material is available on the record to connect the applicant with the alleged offence. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicant while further arguing that the delay, if any, has been explained in the lodging of FIR.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. Admittedly there is about a day's delay in lodging of FIR, which has not been plausibly explained by the complainant; this incident is alleged to have taken place on 18.02.2021 at 2200 hours, whereas FIR has been lodged on 19.02.2021 at 1530 hours though the

distance between the place of incident and Police Station is about 3 kilometers. The brother of the applicant namely Gulnawaz Pathan had also been murdered by the complainant party for which the applicant tried to lodge an FIR, but police refused to do so due to which they filed an application u/s 22-A & B Cr.P.C, which was allowed and thereafter FIR bearing Crime No. 64/2020 was lodged at PS Tando Yousuf. Besides Crime No. 19/2021 of this case, the complainant's mother Mst. Bano Beghum also lodged an FIR bearing Crime No. 23/2021 against the present applicant. This long standing enmity between the parties on account of various FIRs lodged against either party makes the case of the applicant one of further inquiry. False implication of the applicant cannot be ruled out primarily based on the fact that both the FIRs lodged against the applicant came after the applicant lodged an FIR against the complainant party, and therefore the complainant party, in order to pressurize the applicant, lodged these supposed false FIRs against him. Needless to add here that enmity is a double-edged sword. Where on one side, it could provide motive for the commission of a crime, it can also play its part in being a ground for false implication. The injury sustained by injured Mir Hassan has been certified by Doctor as punishable u/s 337-F(iii) or otherwise *Ghayr-Jaifah-Mutafahimah* which is punishable by imprisonment of up to three years, and the same does not fall within the prohibitory clause of section 497 Cr.P.C. Moreover, the application of sections 324 and 452 PPC is a matter that needs thorough probe and the same will be determined at the trial as the applicant had allegedly only caused a single firearm injury to the complainant's son, that too at a non-vital part of his body, even though he was left at the applicant's mercy and there was no repetition of fire. No one from the vicinity witnessed the alleged incident even though the complainant alleged that several people of the neighborhood had gathered after hearing the

firing. All the prosecution witnesses are the complainant's family members, hence interested. In this respect, I am fortified in my view by the case-law reported as *PLD 2017 SC 730 (Khalil Ahmed Soomro and others v. The State)*. The investigation has already been completed and case is challaned before the competent Court of law, therefore, the applicant is no more required for further investigation. No doubt, the applicant is attending the Court regularly and there is nothing on record to show that he misused the concession of bail.

7. For what has been discussed above, I am of the considered view that the applicant has a good case for confirmation of pre-arrest bail, therefore, the interim pre-arrest bail already granted to the applicant by this Court was confirmed on the same terms and conditions vide short order dated 06.09.2021. These are the reasons for the same.

8. Needless to mention here that the observations made herein above are tentative in nature and will not prejudice the case of either party at the time of trial.

J U D G E

Ali Haider