

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

**Criminal Bail Application No.S-443 of 2021.**

Applicants : 1. Imran s/o Muhammad Ayooob.  
2. Aijaz Ali s/o Dilawar through Mr. Ahsan Gul Dahri, advocate.

Complainant : Through Mr. Ghulam Murtaza Mallah, advocate.

The State : Through Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Date of hearing : 09.08.2021.  
Date of order : 09.08.2021.

**ORDER**

Through Criminal Bail Application No.S-443 of 2021, applicants/accused Imran and Aijaz Ali seek post-arrest bail in Crime No. 03 of 2021, under Sections 324, 34, 337-A(i), 504 PPC, registered at P.S. Thebat, Jamshoro, after their bail plea had been declined by learned Additional Sessions Judge, Sehwan vide order dated 27.04.2021.

2. Brief facts of Crime No. 03 of 2021 are that on 22.03.2021 at 2130 hours, complainant Ali Akber lodged FIR at P.S Thebath alleging therein that on the fateful day, accused Imran son of Muhammad Ayoub, Aijaz, Ahmed Khan and Mumtaz, all sons of Dilawar Lund, duly armed with pistols came on two motorcycles at the Hotel of Dost Muhammad situated at Laki Shah Saddar and kicked Anwar and, as a result of which, he fell down and then accused Imran made straight shots with his pistol upon Anwar, which hit him between both his legs. Accused Aijaz Ali caused pistol's butt blows to Anwar on his forehead while accused Mumtaz and Ahmed Khan pointed pistols upon Anwar. Thereafter, injured Anwar raised cries which attracted nearby

people and then accused persons fled away while firing in the air, hence the instant FIR was lodged.

3. Learned counsel for the applicants contended that there are no grounds to believe that the applicants have committed the said offences alleged against them; that the prosecution story is false; that the FIR bearing No. 03 of 2021 is delayed by three days which suggests due deliberation and consultation before lodging the same; that the role assigned to applicant Imran is doubtful; that the case is of two versions, second being that the complainant party aggressed upon the applicants due to which both parties received injuries and it can only be decided at trial as to whom the role of aggressing can be assigned; that co-accused Mumtaz Ali and Ahmed Khan have both been granted pre-arrest bail by the learned Additional Sessions Judge; that the application of S. 324 PPC will be determined at trial; that the pistol so recovered from applicant Imran was in fact taken away from his house during a raid by the police and the false story was managed by the police. In support of his contentions, he has relied on the case law reported as *Jan Muhammad v. Haji Noor Jamal (1998 SCMR 500)*, *Abdul Razzak v. 1<sup>st</sup> Additional Sessions Judge and another (2015 YLR 2595)*, *Naik Amal v. The State (2016 YLR 865)* and *Syed Nazar Ali Shah v. The State (2016 YLR 1899)*.

4. Learned counsel for the complainant while vehemently opposing the grant of bail to the applicants argued that the applicants have been named in the FIR with specific roles; that sufficient material is available on the record including the recovery of the pistol and three empties recovered from the place of incident to connect the applicants with the alleged offence; that the case of the present applicants is distinguishable from that of the co-accused who have been granted bail already. In support of his contentions, he has relied on the case law reported as *Muhammad Nawaz v. The State (2004 SCMR 772)*, *Bilal Khan v. The State (2020 SCMR 937)* and *Sheqab Muhammad v. The State and others (2020 SCMR 1486)*. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicants.

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

6. While it is an admitted position that the applicants have been named in the FIR with specific roles, the injuries attributed are termed to be falling under S. 337-A(2) PPC and 337-F(3) PPC which carry punishment upto five years and three years respectively. Moreover, per the complainant's version of the incident, the complainant party showed no aggression, however were aggressed upon by the applicants and also shot and injured, however the said injuries were on non-vital parts of the body. It is quite questionable in the eyes of this Court as to how the complainants claimed the incident to be an attempt at their lives, being on the assailants' mercy yet only received injuries on non-vital parts of the body, not being able to justify the intent to commit murder. Even otherwise, the application of section 324 PPC is to be determined by the trial Court after proper recording of evidence and statements and consideration of all aspects of the case. Not only this, there is a delay of three days in the lodging of FIR for which no explanation has been provided. From the perusal of record, the present case has two versions, either one having the other party as the aggressor. Such a question is yet to be determined at trial and holds crucial importance at this stage. The applicant Imran and co-accused Aijaz both received injuries for which provisional medical certificates were also made available on the record, duly issued by the MLO. When it came to lodging the FIR, per the applicants, police had refused to lodge their FIR, where after they filed an application under S. 22-A & B which is also available on the record. In this regard, I am fortified with the observations made by the Hon'ble Supreme Court of Pakistan in the case of '*Muhammad Shahzad Siddique v. The State and others*' reported in PLD 2009 Supreme Court 58 regarding the presence of two versions. Furthermore, in presence of counter version by applicant party, *prima facie*, the possibility of spreading the net wide by the complainant party so as to falsely entangle as many as accused cannot be ruled out. In this regard, I am also fortified with the observation of Hon'ble

Supreme Court of Pakistan while dealing with the case of '*Subeh Sadiq alias Saboo alias Kalu v. The State and others*' reported in 2011 SCMR 1543.

7. The recent case before the Hon'ble Apex Court in **Criminal Petition No. 529 of 2021** dated 14.07.2021 titled *Iftikhar Ahmad v. The State* reiterated the long standing principle that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception. The learned counsel for the State and the learned counsel for the complainant could not show this Court any such circumstance or conduct of the applicants that would bring their case under exception to the rule of granting bail in such offences.

8. In view of the above position and circumstances, the applicants having made out their case for grant of post-arrest bail, which were granted bail vide short order even dated. These are the reasons for the same.

9. Needless to mention here that whatever is stated hereinabove being tentative in nature shall not prejudice the case of either party at the time of trial.

**J U D G E**

Irfan Ali