

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD.**

**Cr. Bail Application No.S — 308 of 2021.**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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**23.08.2021.**

FOR HEARING OF MAIN CASE.

Mr. Ghulam Asghar Mirbahar Advocate for applicant.  
Mr. Muhammad Asghar Sodhas Advocate for complainant.  
Mr. Shahid Ahmed Shaikh, Additional P.G. for the State.

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**NAIMATULLAH PHULPOTO, J.-**

Applicants/accused Kamil and

Allah dino seek pre-arrest bail in crime No.33 of 2021, registered at Police Station Kazi Ahmed District Shaheed Benazirabad, for offence under sections 324, 337-F(vi), 337-H(ii), 34 PPC.

2. Previously, both applicants/accused applied for the same relief before learned Illrd Additional Sessions Judge, Shaheed Benazirabad. The same was rejected by him vide order dated 17.03.2021. Thereafter, applicants/accused have approached this Court.

3. Brief facts of the prosecution case as disclosed in the FIR are that present incident occurred on 18.02.2021 at 12-30 p.m. near village Long Khan Khoso. Complainant Atta Muhammad has alleged that he had some dispute with accused persons and accused Allah Dino had declared that he would not spare them. It is further alleged that on 18.02.2021, in the morning time complainant along with his brother Yar Muhammad and cousin Riaz Ali was going to the lands when they reached near village Long Khan, it was 12-30 p.m; accused persons namely Allah Dino and Kamil both by caste Mari armed with pistols appeared there. It is further alleged that applicant/accused Allah Dino abused P.W Yar Muhammad and fired upon him with his pistol with intention to kill him; fire hit to P.W. Yar Muhammad at his right leg. It is further alleged that the applicant/accused Kamil also fired at Yar Muhammad which also hit him at the right leg and he fell down. Thereafter, it is stated that both accused started ariel firing; created harassment and went away. Complainant took his injured

brother Yar Muhammad along with his cousin Riaz Ali to Police Station Qazi Ahmed. Police referred injured Yar Muhammad to the Qazi Ahmed Hospital. It is stated that the condition of the injured was serious, he was referred to the Nawabshah Hospital for further treatment but doctors at Nawabshah again referred the injured to LMC Hyderabad for his better treatment. Thereafter, complainant went to the Police Station Qazi Ahmed and lodged FIR on 24.2.2021. It was recorded against the applicants/accused under sections 324, 337-H(ii), 34 PPC. After usual investigation challan was submitted against both applicants/accused under sections 324, 337-F(vi), 337-H(ii), 34 PPC.

4. Learned Advocate for applicants/accused mainly contended that firearm injuries attributed to the applicants/accused are on non-vital part of the injured Yar Muhammad; fires were not repeated by the applicants/accused. It is further contended that there was delay in lodging of the FIR, for which no plausible explanation has been furnished by the complainant. Lastly, it is argued that complainant had lodged FIR against applicants/accused due to old enmity. In support of his submissions, he has placed reliance on the cases reported as (i) **MUHAMMAD ILYAS v. THE STATE and another** (2010 P.Cr.L.J. 379), (ii) **AHMED ALI v. THE STATE** (2011 YLR 1735) and (iii) **QAYYUM and another v. THE STATE and another** (2016 MLD 1694).

5. Learned Additional P.G. assisted by learned Advocate for the complainant argued that element of the malafide which is precondition for grant of pre-arrest bail is missing in this case. It is further submitted that both applicants/accused had fired upon the injured and the fires hit him. The weapon used by the applicants/accused clearly show that applicants/accused had intention to kill the injured. As regards to the delay in lodging of the FIR is concerned, learned Additional P.G. submitted that after the incident injured was referred to the different hospitals by the doctors as his condition was serious which has caused the delay in lodging the FIR. According to the learned Additional P.G. the delay in lodging the FIR has been fully explained. Learned Additional P.G. has opposed the application for pre-arrest bail to applicants/accused.

6. I have carefully heard the learned counsel for the parties and perused the relevant record including medical certificate. Taking up the first contention of the learned Advocate for the applicant that there was delay in lodging the FIR, it appears that incident occurred on 18.02.2021; on the same day, injured was taken to the Hospital at Qazi Ahmed but looking to the serious condition of the injured, doctors referred him to Hospital at Nawabshah and finally to Hyderabad for further treatment. Apparently, delay in lodging the FIR has properly been explained.

7. As regards to the second contention of learned Advocate for applicants/accused that fires were caused on non-vital part of the body and fires were not repeated by the applicants/accused. Prima facie case of accused falls within the mischief of section 324 of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view whereof, accused cannot be released on bail in the absence of any consideration within the purview of subsection (2) of section 497 of the Code *ibid*. Similarly, murderous assault as defined in the section *ibid* draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship as held in the case of SHEQAB MUHAMMAD v. THE STATE and others (2020 SCMR 1486). In my tentative view, the contention is without merit. As regards to contention that fire was not repeated; non-repeating of fire at the most, can be termed that the accused person had no intention to cause brutal murder, but it cannot be construed that applicants/accused had no intention to kill, particularly when the injuries were caused by means of firearm. Therefore, I am not able to persuade myself to agree with learned Advocate for the applicants/accused that non-repeating of the fire amounts to lack of intention even otherwise use of the firearm is sufficient to show the intention of the applicants/accused. At bail stage, only tentative assessment (of evidence) is to be made and deeper appreciation is not permissible under the law.

8. Applicants/accused are seeking pre-arrest bail in this case. For grant of pre-arrest bail, element of the malafide is precedent condition but it is missing in this case. Pre-arrest bail is the extra-ordinary relief which cannot be granted as a routine. No malafide on the part of the complainant/injured or police have been alleged. Injured P.W. Yar Muhammad has also fully implicated the applicants/accused in his 161 Cr.P.C. statement. Apparently, ocular evidence is corroborated by medical evidence. According to Additional P.G, physical custody of applicants/accused is required by local police for recovery of weapons. In the case of MIR MUHAMMAD and others v. NATIONAL ACCOUNTABILITY BUREAU THROUGH CHAIRMAN and others (2020 SCMR 168), it is held as under:-

“5. . . . .

***Grant of pre-arrest bail is an extraordinary remedy, essentially rooted into equity, a judicial power to be cautiously exercised with a view to protect the innocent from the horrors of abuse of process of law, in prosecutions initiated by considerations and for purposes stained with the taints of mala fide; this judicial protection is not to be extended in every run of the mill criminal case, with pleas structured on bald denials and parallel stories. View taken by the learned High Court being well within the remit of law does not call for interference. Petitions fail.”***

09. For the above stated reasons, prima facie, there appears reasonable grounds for believing that applicants/accused have committed the alleged offences, therefore, no case for grant of pre-arrest bail is made out. Accordingly, order dated 22.04.2021, whereby the applicants/accused were admitted to interim pre-arrest bail is hereby recalled and instant bail application for pre-arrest bail is dismissed.

10. Needless to mention that observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

A.