

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

Cr. Bail Application No.S-276 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

Date of hearing : 16.08.2021
Date of order : 16.08.2021

Mrs. Razia Ali Zaman Khan Patoli, Advocate for applicant a/w applicant
Mr. Santosh Kumar J. Kalal, Advocate for complainant.
Mr. Shahid Ahmed Shaikh, Additional P.G

ORDER

NAIMATULLAH PHULPOTO, J.- Applicant / accused Kashif Gul seeks pre-arrest bail in Crime No.51 of 2021, registered at Police Station Kot Ghulam Muhammad on 20.03.2021 at 2330 hours for offences under Sections 324, 506(ii), 504, 147, 148, 149 PPC. Previously, he applied for pre-arrest bail before learned Additional Sessions Judge-I / MCTC, Mirpurkhas, the same was declined by him vide order dated 03.04.2021.

2. Brief facts of the prosecution case are that complainant Shahiryar Khan lodged F.I.R alleging therein that he owns agricultural land in Deh 290-A Taluka Kot Ghulam Muhammad. On the day of incident (20.03.2021) he alongwith peasant / hari Krishan Kumar and Veho Kolhi went to the lands for collection of wheat. At about 09:20 p.m. the accused persons appeared there and they were identified on the torch lights. It is alleged that applicant/accused Kashif Gul abused the complainant over the dispute on the land and fired from his pistol, which hit PW Krishan Kumar at his right leg. Accused Pervez also fired upon the complainant but fire missed. Thereafter, PW Krishan Kumar in the injured condition was taken to the hospital and F.I.R of the incident was lodged on

20.03.2021 at 2330 hours at P.S Kot Ghulam Muhammad for offences under Sections 324, 506(ii), 504, 147, 148, 149 PPC.

3. Learned Advocate for the applicant has mainly contended that the injury attributed to the applicant is on non-vital part of the body of injured PW Krishan; that fire was not repeated and complainant did not sustain any fire arm injury. It is further submitted that false F.I.R has been registered against the applicant due to dispute over the land. In support of submissions, reliance has been placed upon the cases of HADI BAKHSH v. MUHAMMAD ARIF and 2 others (2021 P.Cr.LJ 502), SHAKEEL SHAH v. The STATE (2017 P.Cr.LJ 1658), QASIM v. The STATE and another (2018 P.Cr.LJ 795) and Mir NAWAZ v. The STATE (2017 YLR 93).

4. Learned Additional P.G Sindh assisted by learned Advocate for the complainant opposed this pre-arrest bail application on the ground that the relief of pre-arrest bail is an extraordinary relief. It is stated that applicant has caused fire arm injury to PW Krishan on his leg; corroborated by medical evidence. It is further submitted that two empties were secured from the place of wardaat and police could not recover the pistol used by the applicant as he obtained interim pre-arrest bail from the trial Court. Lastly, it is submitted that ingredient for grant of pre-arrest bail are not satisfied in this case and the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C. In support of submissions, reliance is placed upon the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129).

5. I have carefully heard the learned Advocate for the applicant/accused Kashif Gul and Additional P.G Sindh assisted by learned Advocate for the complainant and perused the relevant record.

6. From the perusal of record, it appears that the incident had occurred on 20.03.2021 at 2120 hours and F.I.R of the incident was promptly lodged on the same day at 2330 hours. The allegation against the applicant is that he caused fire arm injury to PW Krishan on his right leg; ocular evidence is corroborated by medical certificate. The Investigating Officer recorded 161 Cr.P.C statement of PW Krishan Kumar; he has also clearly stated that the applicant/accused fired from his pistol which hit him on his right leg with intention to kill him. Mashirnama of the place of wardaat reflects that two empties were secured from the place of wardaat. It is the case of the prosecution that applicant fired upon PW Krishan Kumar and another accused fired upon the complainant but fire was missed. Grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law therefore a person seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. In the present case, no mala fide on part of the complainant and police have been alleged. Contention of the defence Counsel that fire was not repeated is not sufficient to grant pre-arrest bail to the applicant. In the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129), it is held as under:-

“2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations

wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”

7. In view of the above legal position, prima facie there appear reasonable grounds for believing that applicant / accused has committed the alleged offence. Hence, no case for grant of pre-arrest bail is made out. Consequently, application for pre-arrest bail is dismissed. The interim pre-arrest bail already granted to the applicant/accused vide order dated 06.04.2021 is hereby recalled.

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

JUDGE

Shahid