

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Applications No. 362 & 363 of 2022

Applicant : Mashooq s/o. Firdous Khan, through
Mr. Naeem Akhtar Khan Tanoli, advocate

Respondent : The State, through Mr. Muntazir Mehdi,
Additional Prosecutor General

Complainant : Gulab Khan s/o. Roshan Khan, through
Mr. Anwer Zaib, advocates

Date of hearing : 19.04.2022
Date of order : 19.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above-mentioned both bail applications as the same being arisen out of two interconnect F.I.Rs., have been heard by me together.

2. Through Cr. Bail Application No. 362/2022, applicant/accused Mashooq s/o Firdous Khan seeks post-arrest bail in Crimes No. 917 of 2021, registered under sections 324/34, P.P.C. at P.S. Boat Basin, Karachi, while by means of Cr. Bail Application No. 363/2022, he seeks bail in Crime No. 918 of 2021, registered under section 23(1)(a) Sindh Arms Act, 2013 at the same police station. His earlier applications for the same relief bearing Nos. 4547/2021 & 151/2022 in Crime No. 917 of 2021 and No. 152/2022 in Crime No. 918/2021 were dismissed by the learned Additional Sessions Judge-X, Karachi-South vide orders dated 15.12.2021 and 24.01.2022, respectively.

3. It is alleged that, on 28.11.2021 at 02:45p.m., on account of altercation between sons of applicant and complainant Gulab Khan s/o. Roshan Khan, the applicant caused firearm injury to complainant, which hit on his right leg in joint of thigh, for which he was booked in Crime No. 917 of 2021. After receipt of medico-legal report of the complainant/injured, sections 337-A(i), 337-L(ii) and 337-F(vi), P.P.C. were added in the case.

4. It is further alleged that on 29.11.2021 at about 0630 hours at Street No. 14, Gulshan-e-Sikandarabad, Keamari, applicant was arrested by a police party headed by ASI Muslim Shah of P.S. Boat Basin, Karachi on being found in possession of one unlicensed 30 bore loaded pistol, for that he was booked in Crime No. 918 of 2021.

5. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant; that there is no independent eye-witness of the alleged incident; that on the day of alleged incident complainant along with his son Muhammad Yousuf entered into the house of applicant and quarreled with him and started firing with the result applicant's tenant, namely, Mujahid received 3 bullet injuries, who lodged an F.I.R. bearing No.916/2021 against them and on the next day of alleged incident applicant was arrested by ASI Muslim Shah from his house, who took his licensed pistol and in collusion with complainant, police malafidely registered F.I.R. No.918/2021, under section 23(1)(a) of Sindh Arms Act, 2013 against him; that the alleged injury is on non-vital part of the body of the complainant, which being punishable up to seven years the same does not fall within the prohibitory clause of section 497, Cr. P.C.; that the applicant is aged about 75 years old and suffering from multiple diseases; that the trial of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; therefore, he is entitled to the bail. In support of his contentions, learned counsel relies upon the case of *Mutabar Khan v. Mst. Bacha Bai and another* (2001 P.Cr.L.J. 165), *Gul Wali v. Qaza Khan and another* (2000 MLD 98), *Saleem Khan v. The State* (1998 P.Cr.L.J. 140), *Badaruddin v. The State* (2010 MLD 1052), *Dilawar Khan v. The State* (2004 YLR 431), *Umar Hayat v. The State* (2008 SCMR 1621), *Muhammad Afsar v. The State* (1994 SCMR 2051), *Muhammad Umar v. The State and another* (PLD 2004 S.C 477), *Mir Muhammad v. The State* (2011 P.Cr.L.J. 361), *Manjawar Shah v. The State* (2011 MLD 440), *Habibullah alias Haban v. The State* (2010

P.Cr.L.J. 1917), *Beejal and another v. The State* (**2014 P.Cr.L.J. 261**) and *Manzoor and 4 others v. The State* (**PLD 1972 S.C 81**).

6. On the other hand, learned counsel for the complainant as well as learned Addl. P.G. oppose the grant of bail to applicant on the ground that applicant was nominated in the FIR with specific role of causing firearm injury to the complainant; that the crime weapon has been recovered from applicant and as per ballistic report the said pistol was in working condition, while three empties recovered from the place of incident were also fired from it; that sufficient material is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled for the concession of bail. In support of his contentions, learned counsel relies upon the case of *Muhammad Sher alias Malang v. The State* (**PLJ 2001 SC 245**) and *Sheqab Muhammad v. The State and others* (**2020 SCMR 1486**).

7. I have heard learned counsel for the parties and perused the material available on record with their assistance.

8. The applicant is more than 70 years of age and confined in judicial custody since day of his arrest i.e. 29.11.2021. Police has already submitted challan in both the cases; hence his physical custody is not required by the police for further investigation. It is an admitted fact that the incident took place over quarrel between the children of the complainant and the applicant. It was a sudden incident which also has a counter version recorded vide F.I.R. No. No. 916/2021. It is clear from the medico-legal report that the single injury allegedly caused by the applicant to complainant being on his right buttock is on the non-vital part of the body. The alleged injury has been declared by the MLO as *Jurh Ghayr-jائفah Munaqqillah*, falling under section 337-F, P.P.C. which is punishable with imprisonment up to seven years as *Tazir*; hence, the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. So far, application of

section 324, P.P.C., is concerned, had it been intention of the applicant to commit *qatl-e-amd* of the complainant then there would have been multiples fires and injuries on his vital parts of the body; hence, it is yet to be seen if applicant, in the circumstances, had any intention to commit *qatl-e-amd* of the complainant and such question could only be determined at trial. As such, case of the applicant is covered under sub-section (2) of section 497, Cr. P.C., requiring further inquiry into his guilt. Ordinarily, in such cases, the bail is to be granted as a rule. The present case does not fall within the exception laid down by the Apex Court in the case of *Tariq Bashir vs. The State (PLD 1995 SC 34)*.

9. As regard the allegation of recovery of unlicensed pistol from the possession of applicant, the applicant has annexed a copy of the license of the alleged pistol with his bail application and he claims that he also showed the same to I.O of the case, yet he has been challenged in Crime No 918/2021; hence, his guilt in said crime also requires further inquiry.

10. For the foregoing facts and reasons, I allow these both criminal bail applications. Consequently, applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs. 1,00,000/- (Rs. One Lac Only) in each case/crime and P.R. Bond for like amount to the satisfaction of the trial Court

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. In case applicant misuses the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE

Athar Zai