

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Appln No. 318 of 2020

Date:	Order with signature of Judge
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For hearing of bail application

24.4.2020

Mr. Irshad Ali Bhatti, Advocate for applicant
Mr. Talib Ali, DPG
.X.X.X.X.XX

Aftab Ahmed Gorar, J.:- The applicant was admitted to pre-arrest bail vide order dated 05.03.2020 and today the matter is fixed for confirmation or otherwise.

2. Learned counsel for the applicant while reiterating the grounds mentioned in the memo of bail application submitted that after obtaining the pre-arrest bail, the applicant is regularly attending the trial court as well as this court and did not misuse the concession of pre-arrest bail. Learned counsel for applicant further submitted that the applicant is innocent and has falsely been implicated in this case due to enmity by the complainant. He contended that there was a civil dispute between the complainant and applicant over watercourse which later on turned in enmity and led to lodge several complaints and cases against each other. He further contended that the incident alleged to have taken place on 01.12.2019 whereas the FIR was lodged on 23.1.2020 with unexplained inordinate delay of about one month and twenty two days. He also contended that in the reported incident it is claimed by the complainant that the applicant was armed with iron rod and gave iron blow to the complainant which hit on his little finger of left hand hence the offence does not fall within prohibitory clause of section 497 Cr.P.C. He

therefore prays that the interim bail granted to the applicant on 05.3.2020 may be confirmed.

3. Learned DPG Sindh submits that there was civil dispute between the parties but taking place of incident cannot be denied. However he opposed the confirmation of bail on the ground that in the incident admittedly the little finger of left hand of the complainant was hit by giving iron blow as alleged in the FIR is a heinous offence. He therefore, submits that the interim bail granted to the applicant may be recalled.

4. I have heard the learned counsel for applicant and learned Deputy Prosecutor General Sindh and perused the record.

5. Perusal of the record reveals that there is/was civil dispute between the parties over a watercourse which later on turned in enmity and led to lodge several complaints and cases against each other, copies of such complaint and a FIR lodged by the applicant against complainant is also available on record. Admittedly there is also delay of one twenty two days in lodging the FIR and when there are inimical terms between the parties, the false implication of the applicant in this case cannot be ruled out unless specific evidence comes on record. Prima facie, case against applicants appears to be doubtful benefit of which shall go to the applicant. In the case reported as Syed Amanullah Shah v. The State (PLD 1996 SC 241) Hon'ble Supreme Court has held as under:

“So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be

snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused”.

6. No complaint of misuse of concession of bail or tempering the record has been pointed out. The applicant is regularly appearing in the case before this court as well as trial court. It is not out of context to mention here that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. At bail stage, deeper appreciation of evidence and circumstances appearing in the case are not permitted and only tentative assessment is to be made, however, where accused satisfies the Court that there are reasonable grounds to believe that he is not guilty of such offence, then the Court must release him on bail. Wisdom is sought from the case titled *Yar Muhammad v. The State* and another reported in 2004 YLR 2230.

7. It may not be out of place to mention here that the object of bail is neither punitive nor preventive and therefore, deprivation of liberty must be considered a punishment, unless it may be required to ensure the presence of accused during trial. The punishment begins after conviction and not before it, as in criminal justice system every man is deemed to be innocent until duly found guilty. It needs not to re-emphasize that the purpose of putting the un-convicted persons in custody is nothing but to secure their attendance at the trial.

8. Keeping in view the facts and circumstances of the case, the case of applicant prima facie calls for further inquiry in terms of subsection 2 of section 497 Cr.P.C. Consequently, the interim pre-arrest bail granted to applicant Ahmed Ali Shah son of Muhammad Shah vide order dated 05.3.2020 is confirmed on same terms and conditions.

The instant Criminal Bail Application stands disposed of in the above terms.

J U D G E