

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Bail Application No.S- 351 of 2021

For hearing of Bail Application

Mr. Achar Khan Gabol Advocate for Applicant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.
Mr. Ubedullah Ghoto Advocate for Complainant.

Date of Hearing: **19-07-2021**

ORDER

Muhammad Saleem Jessar J. Through this bail application, applicant Zahid Hussain Chachar seeks his release on post-arrest bail in Crime No.11 of 2021, P.S, Katcho Bindi-I, under Sections 324 114, 147, 149, 403 PPC.

2. Bail plea preferred by the applicant before first forum was declined by means of order dated 31.05.2021 vide Crl. Bail Application No.708 of 2021.

3. The crux of the prosecution case as unfolded by the complainant in the FIR are to the effect that on 16.05.2021 at about 09-00 a.m, present applicant along with co-accused duly armed with lathies, after forming an unlawful assembly and in prosecution of common object of such an unlawful assembly, had intercepted with complainant Abdul Raheem and his witnesses and caused lathi injuries on the person of his brother Sobdar with intention to kill him, at the instigation of co-accused Fakir Muhammad. It is further alleged that during scuffle,

injured PW Sobdar had lost his CNIC and cash amounting to Rs.13/14,000. Motive of the incident as shown by the complainant is stated to be a KARAP dispute.

4. Learned counsel for applicant submits that the FIR is delayed for about one day and the role attributed against the applicant is that he allegedly caused lathi blow to injured PW Sobdar on his head, which subsequently was declared by MLO as mentioned under Final Medical Certificate dated 25.05.2021 to be Shujjah-i-Mudihah, punishable under Section 337A(ii) PPC. He further submits that parties are already on strained relations over matrimonial dispute and therefore false implication of the applicant cannot be ruled out. He further submits that prior to this alleged incident, applicant was also got booked under Crime No.13 of 2020 of P.S, Katcho Bindi-I, under Section 310, 120-B, 143 PPC, whereas FIR No.10/2020 of P.S, Katcho Bindi-I was also got registered by one Naseer Ahmed under Sections 337F(v) PPC etc. against complainant party. He further submits that incident as shown is said to have taken place on 16.05.2021 at 09-00 a.m, whereas FIR was lodged after issuance of provisional medical certificate on 17.05.2021 and submits that after receiving final medical certificate FIR was got registered thereby specific role was assigned to the accused, which according to him, was impossible during scuffle that the complainant was noting down injuries of each accused being played/done by each of accused during quarrel. In support of his contentions, he relied upon cases of Umar Hayat v. The State **(2008 SCMR 1621)**, Muhammad

Bachal Memon and others v. Syed Tanveer Hussain Shah (**2014 SCMR 1539**) and Muhammad Faisal v. The State (**2020 SCMR 971**).

5. Learned Additional P.G for the State opposes bail application on the ground that role attributed to the applicant is on vital part of body of injured PW Sobdar, besides enmity as shown is a double-edged weapon, therefore, plea taken by the applicant with regard to his involvement due to longstanding dispute is not helpful to him.

6. On the other hand, learned counsel for complainant also opposes bail application on the ground that applicant was main accused and caused lathi blow to injured PW Sobdar on his vital part of body, therefore, he deserves no leniency in shape of his release on bail.

7. Heard arguments and perused the record. Admittedly, FIR was delayed for about one day and provisional medical certificate was issued on 17.05.2021, therefore, contention and apprehension shown by the counsel for the applicant to the effect that after noting down the injuries shown by the MLO under the provisional medical certificate instant FIR was lodged, carries weight. The fact to the effect that all accused had been assigned specific role of causing injuries to all concerned is a question which is yet to be determined by the trial Court after recording evidence of the parties. Injury attributed to the applicant as per medical evidence carries maximum punishment of five years and thus does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. As far as question of applicability of Section 324

PPC is concerned, it is yet to be determined by the trial Court after recording evidence of the parties. Case has been challaned and all co-accused have been granted bail, therefore, applicant is no more required for further investigation.

8. Under the circumstances of the case and in view of the dictum laid down in the case of Khalil Ahmed Soomro and others v. The State **(PLD 2017 SC 730)**, case against the applicant requires further enquiry within meaning of subsection 2 of Section 497 CrPC. Consequently, instant Crl. Bail Application is hereby allowed and the applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (One Lac) with P.R bond in the like to the satisfaction of the trial Court.

J U D G E

Ahmad