

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

Criminal Bail Application No.S-1260 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objections. 2. For hearing of main case.
<u>02.01.2023</u>	

Mr. Altaf Ahmed Shahid Abro, Advocate for applicant.
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.
Mr. Haider Ali Maheri, Advocate for complainant.

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ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Muhammad Bakhsh claims his release on bail in Crime No.42 of 2021 P.S Bulri Shah Karim under sections 302, 324, 337-F(ii), 337-A(i), 337-F(i), 337-L(ii), 504, 34, 114 P.P.C.

2. Prior to this, the applicant filed criminal bail application before the Court of Sessions which was declined by means of order dated 05.08.2022, hence this bail application.

3. After submission of challan the case has been assigned to the Model Court/ Court of Sessions Judge, Tando Muhammad Khan vide Sessions Case No.04 of 2021 re-The State Vs. Muhammad Alam & others.

4. The crux of the prosecution as unfolded in F.I.R is that on 26.05.2021 the complainant along with his brothers namely Shafi Muhammad Kapri aged about 35/36 years, Ghulam Hussain Kapri and nephew Manzoor S/o Qurban Kapri were thrashing crop of dalda/sunflowers, where son of Aalam Kapri came there and taken the dalda/sunflowers in the lap of his shirt on which the complainant forbidden him by saying that he has his own dalda/sunflowers crop. The boy returned back to home, at about 09:00 a.m. accused namely Aalam s/o Haji Khan Muhammad Kapri armed with hatchet, Muhammad Bakhsh s/o Aalam Kapri (present applicant) armed with hatchet, Murtaza s/o Aalam Kapri armed with hatchet and Manzoor s/o Aalam armed with lathi came there while co-accused Aalam Kapri extended threats of dire consequences and instigated his sons to commit their murder. By saying so, co-accused Aalam Kapri caused hatchet blow to Shafi Muhammad on mid of his head, present applicant/accused Muhammad Bux caused hatchet below to complainant on mid of his head and also caused wrong side of hatchet on different parts of his body while co-accused Murtaza caused hatchet blow to Ghulam Hussain on left side of his shoulder and accused Manzoor caused lathi blow to nephew of complainant namely Manzoor on his head. The complainant party made hue and cry which attracted Habibullah s/o Abdul Ghafoor Kapri and Muhammad Ali s/o Abdul Ghafoor Kapri, who rescued them.

Thereafter, Habibullah arranged vehicle and proceeded to the police station and while getting letter for medical treatment shifted injured to Taluka Hospital, Bulri Shah Kareem, where injured Shafi Muhammad succumbed to injuries and expired due to oozing of blood. The complainant informed to the police regarding death of Shafi Muhammad on which ASI Muhammad Hasil reached at hospital, examined dead body of deceased Shafi Muhammad and after completing legal formalities, the dead body was handed over to the complainant for burial and funeral. On 27.05.2021, the complainant lodged an FIR against the accused persons.

5. Learned counsel for applicant submits that allegation against the applicant is he allegedly caused wrong side hatchet blows to complainant which landed on different parts of his body; however, none of the injury allegedly sustained by the complainant is on his vital part or grievous in nature. Moreover, the injuries allegedly sustained by the injured PW/Complainant have been declared by medico-legal officer to be punishable under sections 337-F(ii), A(i), F(i), L(ii) P.P.C which do not fall within the prohibitory clause of section 497 Cr.P.C. He next submits that though the applicant is alleged to have armed with hatchet; however, has caused no injury to deceased Shafi Muhammad. Besides co-accused Murtaza and Manzoor against whom same role was assigned have been granted bail by the Trial Court on the ground they are juvenile/underage. He further submits that applicant was arrested on 27.05.2021 whereas allegedly hatchet has been shown to have been recovered at his pointation on 30.05.2021, therefore, case against the applicant requires further inquiry. In support of his contentions, he places his reliance upon the cases of *Abu Bakar Siddique alias Muhammad Abu Bakr Vs. The STATE and others [2021 SCMR 540]*, *Darhoon Vs. The STATE [2018 YLR Note 228]*, *Farzand Ali Vs. Taj and 2 others [2000 SCMR 1854]*, and *Ali Sher and another Vs. The STATE [2022 P Cr. L J Note 33]*, as well as order dated 24.03.2022 passed by learned Trial Court.

6. Learned Assistant Prosecutor General, Sindh appearing for the State opposes the bail on the ground that applicant is nominated in the F.I.R besides he has been assigned specific role of causing hatchet blows to complainant, therefore, he is not entitled for the bail. She further submits that as far case of co-accused Murtaza and Manzoor is concerned, they have been bailed out by the Trial Court on the ground that they were underage, therefore, bail granted to them is not helpful for the present applicant. She; however, admits that applicant has not caused any injury to deceased.

7. Learned counsel for complainant also opposes the bail application and submits that applicant has caused in all six injuries to complainant on his person, therefore, he is not entitled for the bail. He further submits that applicant has been held liable for vicarious liability, therefore, is not entitled for bail. However, learned counsel for complainant admitted that trial has not been commenced so far.

8. Heard and record perused.

9. No doubt the applicant had allegedly caused hatchet blow to complainant on his head; however, said injury has been opined by the medico-legal officer as *Shajjah-i-Khafifah* to be punishable under section 337-A(i) P.P.C and is bailable. The remaining injuries allegedly sustained by complainant are on his non-vital parts of the body; however, same have not been declared to be grievous in nature or detrimental to his life, therefore, have been opined by the medico-legal officer to be punishable under sections 337-F(ii), F(i), and L(ii) P.P.C which carries maximum punishment upto three years, hence does not exceed the limit of prohibitory clause of section 497 Cr.P.C. In the circumstances as well as the role attributed to applicant whether the applicant could be held to be vicariously responsible for causing murder of Shafi Muhammad and whether he could be awarded sentence in terms of imprisonment in view of proviso to section 337-N(2) P.P.C are the questions which require further inquiry. Moreover the applicant is in custody right from the date of his arrest viz. 27.05.2021 for almost more than 19 months would further tilt the scales of justice in favour of bail rather than jail. In case of *Mazhar Hussain Vs. The State and another* [2012 SCMR 887] the Hon'ble Supreme Court of Pakistan while discussing identical issue in paras-5 and 6 of the order laid down as under:

*"5. The record reveals that the petitioner is not charged for firing any shot at the deceased. He is charged only for inflicting an injury on the head of the deceased with sharp side of the hatchet. The said injury in the first instance was mentioned as lacerated but then changed as incised. What is the nature of the injury in view of the background mentioned above; whether charge, in the matrix of the case could be held to be exaggerated; whether the petitioner in view of the role assigned to him, could be held to be vicariously responsible for the murder of Mst. Hameeda **Sultana and** whether he could be awarded sentence in terms of imprisonment in view of the proviso to section 337-N(2), when so far there is nothing on the record to show that he is hardened, habitual, dangerous or desperate criminal, are the questions requiring further inquiry. The fact that the petitioner has been in jail for almost 10 months would further tilt the scales of justice in favour of bail rather than jail.*

6. The argument that expression of an opinion at this stage may prejudice the case of either of the sides when the trial has commenced and is likely to be concluded within a couple of months, would not deter this Court from granting bail, when a case for further inquiry is made out.

10. Moreover as far as argument advanced by learned APG the applicant produced crime weapon viz-a-viz hatchet on 30.05.2021, therefore, is not entitled for bail is concerned, the prosecution has to establish such belated recovery after

recording evidence of its witnesses. As admitted by learned counsel for complainant the trial has not commenced so far.

11. The applicant has been languishing in jail for almost 19 months without progress in his trial. It is settled law that one cannot be kept behind the bars for an indefinite period, without progress in his trial. The expeditious trial is the right of every accused, therefore, one cannot be deprived of his right merely on the basis of certain technicalities.

12. In the case of *Abu Bakar Siddique alias Muhammad Abu Bakr supra* the Hon'ble Supreme Court of Pakistan has granted bail to the petitioner almost on identical role. In the circumstances and in view of the dicta laid down by the Hon'ble Supreme Court in case of *Qurban Ali Vs. The State and others [2012 SCMR 279]*, I am of the opinion that case against the applicant requires further inquiry within the meaning of sub-section (2) to section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs) and P.R bond in the like amount to the satisfaction of learned Trial Court.

JUDGE

Muhammad Danish