

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 319 of 2022

Date	Order with signature of Judge
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Nadeem s/o Sher Muhammad Vs. The State

Mr. Aamir Jameel, Advocate a/w applicant/accused.
 Mr. Shahid Ali Qureshi, Advocate a/w Complainant.
 Ms. Rubina Qadir, D.P.G.

Date of Hg: 16.01.2023
 Date of Order: 16.01.2023

ARSHAD HUSSAIN KHAN, J: The applicant / accused namely; Nadeem son of Sher Muhammad after rejection of his earlier application for grant of pre-arrest bail by learned Additional Sessions Judge-III, Malir, Karachi, through instant criminal bail application has sought pre-arrest bail in Crime No. 229/2021, registered under Section 324 r/w 337-F(VI) P.P.C. at police station Malir City, Karachi. The Applicant was admitted to interim pre-arrest bail by this Court, vide order dated 18.02.2022, now he seeks confirmation of the same.

2. Briefly the facts of the case as narrated in the F.I.R. lodged by the complainant namely; Naeem Muhammad son of Sher Muhammad are that his elder brother Nadeem son of Sher Muhammad (applicant/accused) used to quarrel with family members on petty issues and on 26.04.2021 at 0900 hours, he with intension to kill his younger brother namely; Shahid son of Sher Muhammad fired upon him through his licensed 12 bore repeater, which caused injury to the left leg of Shahid. Upon sustaining injury, the injured was immediately taken to Jinnah Hospital through Ambulance, thereafter the above FIR was lodged.

3. Learned counsel for the applicant/accused while reiterating the contents of the bail application has contended that the applicant/accused is innocent and has falsely been implicated in the case with malice and ulterior motives on account of dispute over land and in this regard a civil suit No. 953/2019 filed by the applicant, inter alia, against the complainant is pending adjudication before the IInd Senior Civil Judge, Malir-Karachi. It is further contended that the property stands in the name of the applicant/accused and the other side pressurizing him to transfer the same in their names. He has next contended that as per FIR the victim sustained bullet injury on his left leg, which is non-vital part of the body as such there appears no intention to kill the victim who is also a real brother of the applicant and complainant as such it is self-made story concocted by the complainant. He further argued

that the victim is not cited as prosecution witness in the charge sheet as such the story made by the complainant is false and fabricated. It is urged that the deeper appreciation of evidence is neither desirable nor permissible at the bail stage. It is further urged that the facts narrated creates doubts and the case needs further inquiry and as such the applicant/accused is entitled for confirmation of pre-arrest bail. It is also contended that the investigation has been completed and the applicant is not required for any further investigation. He has lastly argued that the applicant participated in the investigation and after obtaining interim pre-arrest bail he has been regularly appearing before the trial court and never misused the concession. Learned counsel in support of his arguments has placed reliance on the case of *Zaheer Ahmed Khan v. The State* [2003 SCMR 919], *Nazeer and 2 others v. The State* [2003 YLR 1137] and *Ahmed Ali vs. The State* [2011 YLR 1735].

4. Learned counsel for the complainant has argued that the fire-arm injury made by the applicant/accused was on vital part of the victim and there is sufficient evidence against the applicant/accused, which connects him in the commission of offence and as such the bail may be rejected.

5. Learned Addl. P.G. for the State has vehemently opposed the bail application and urged that the applicant/accused is not entitled for confirmation of bail in the present case.

6. I have heard learned counsel for the parties and perused the material available on the record as well as case law cited by learned counsel for the applicant/accused.

7. Admittedly, the applicant, victim and the complainant, inter se, are real brothers and further there is no denial that a civil suit filed by the applicant, inter alia, against the complaint in respect of the property is pending adjudication before a civil court. The allegations against the applicant are that he had fired upon his real brother namely; Shahid causing injury to his left leg. The record reflects that the victim/injured has not been placed in the charge sheet and further as per FIR, the injured has received firearm injury on his left leg whereas as per the charge sheet such injury is on right leg. The injury ascribed to the applicant/accused has been declared falling under section 337-F(vi), P.P.C. which entail as per Statute maximum punishment of seven years. The accumulative effect of all these facts and circumstances create doubt regarding truthfulness of the prosecution version and it is established principle of law that the benefit of doubt can even be extended at bail stage.

8. Insofar as the question of applicability of Section 324, P.P.C. is concerned, undeniably, the injury is on non-vital part, against a motive which is feeble in nature, as such immense danger of causing death of the injured is missing, which also makes the case for further probe as to the intention of murder of the injured. Nonetheless, truth or otherwise of charges levelled against the applicant/accused could only be determined at the conclusion of the trial after taking into consideration the evidence adduced by both the parties. It is settled principle of law that at bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance. The accused was admitted to interim pre-arrest bail on 10.02.2022 and since then he is attending the trial court regularly and no complaint with regard to misusing the concession of ad-interim bail has been made by the complainant. Conversely, it was alleged that it is the complainant side that is not pursuing the case before the learned trial court. Keeping in view the facts and circumstances and while seeking guidance from judgment of the Hon'ble Supreme Court in the case of *Muhammad Faisal v. The State and another* [2020 SCMR 971], I am of the opinion that the case of the prosecution requires further inquiry as such the interim bail granted to the applicant/accused, vide order dated 18.02.2022, is hereby confirmed on the same terms and conditions.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Bail Application stands disposed of.

JUDGE