

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1894 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

29th November, 2021

Mr. Farrukh Jan Shaikh, Advocate a/w applicant.
Mr. Talib Ali Memon, APG.
Mr. Muhammad Rafiq Khan, Advocate for complainant.

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Omar Sial, J.: Muhammad Iqbal has sought pre-arrest bail in crime number 404 of 2020 registered under sections 380, 452, 337-A(i), 427 and 34 P.P.C. at the Soldier Bazar police station. Earlier, his application seeking bail was dismissed by the learned 11th Additional Sessions Judge, Karachi East on 13-2-2021.

2. Facts of the case are that the aforementioned F.I.R. was lodged on 1.11.2020 on the complaint of Rustam Shah. He recorded that the applicant was his employee but due to continuous negligence in his duties, he had fired him. The applicant was not happy with his dismissal from employment and thus on 29.10.2020, Shah and the applicant had an altercation. The next day i.e. 30.10.2020, when Shah was asleep at home, the applicant came there in the evening with one another person, entered into Shah's house and after giving him a severe beating left the house with some valuables.

3. I have heard the learned counsels for the applicant as well as the complainant and the learned Assistant Prosecutor General. My observations and findings are as follows.

4. Learned counsel has argued that no specific role has been assigned to the applicant; in fact as the applicant was the complainant's employee the charge of trespass against the applicant is baseless; that the case is a false case; that the F.I.R. is delayed; there are no eye witnesses; section 103 Cr.P.C. was not complied with; that the complainant belongs to the Zorastrian faith and because he would stop the applicant from praying the two had an altercation; no description of the valuables stolen has been given by the complainant; that the applicant was sleeping at home when the incident is said to have occurred. The

learned counsel for the complainant and the learned Assistant Prosecutor General have both resisted the grant of bail.

5. The record reflects that the complainant is a 60 year old man who sustained such a serious beating that he fell unconscious and had to be admitted in the emergency ward at the Civil Hospital. It was only the next day that the doctors allowed the police to record his statement. Hence the delay in the registration of the F.I.R. The delay has been reasonably explained. I record my immense displeasure at the attempt by the applicant and his counsel to give the incident a religious flavor. The malicious intent of the applicant is evident from the reason he has argued for the altercation between the complainant and the applicant. The complainant has maintained all along that he was living alone hence it is obvious that there will be no eye witnesses. However, the best evidence is the statement of the injured person himself who had absolutely no reason to implicate the applicant in the false case. I also fail to understand the argument of the learned counsel on trespass as on the one hand he argued that the applicant lived in the same house as an employee and on the other hand he argues that the applicant was sleeping in his own home. In the circumstances of the case I also fail to see the relevancy of the argument regarding violation of section 103 Cr.P.C. Medical reports on record support the complainant's account.

6. Upon a tentative assessment it appears that the prosecution is in possession of sufficient material to establish a nexus of the applicant with the offences with which he is charged. Of course it will be the learned trial court which will finally decide the matter after it has examined the available evidence. At this preliminary stage however the applicant has failed to make out a case for grant of bail.

7. In view of the above, the application is dismissed.

JUDGE