

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 89 of 2022

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

11th April, 2022

Ms. Saify Ali Khan, Advocate for applicant.
Ms. Sultana Begum, Advocate for complainant.
Ms. Rahat Ahsan, DPG.

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Omar Sial, J.: Amir Sheikh alias Bobby has sought post arrest bail in crime number 530 of 2017 registered under sections 324 and 34 P.P.C. (in which offences under sections 337-F(iii) and 337-F(v) P.P.C. were subsequently added) at the Gulshan-e-Iqbal police station in Karachi. Earlier, his application seeking bail was dismissed on 15.01.2022 by the learned 2nd Additional Sessions Judge, Karachi East.

2. A background to the present case is that the aforementioned F.I.R. was registered at 6:00 p.m. on 14.12.2017 by Talha Ahmed Baig reporting an incident which had occurred earlier that day at 2:30 p.m. Talha, while lying injured in the Emergency Ward of the Jinnah Hospital, recorded that he was sitting outside his home with his friend named Ismail when a vehicle carrying his parents-in-law, Saleem Butt and Ashfa Saleem, as well as one Sheraz Shaikh and the applicant (who was driving the vehicle and who is Talha's wife's maternal uncle) emerged on the scene. The applicant disembarked with a pistol and opened fire on the two boys. Talha sustained injuries on both his legs and one hand whereas Ismail was shot in the chest and is apparently still in critical care in the hospital. The police recovered six empties of bullets fired from a 9mm pistol from the scene of offence and learnt that the firing took place as Talha had married the daughter of Saleem Butt and Ashfa Saleem against their wishes.

3. The learned counsel for the applicant has argued extensively to show, what she believes are, contradictions between the witness statements recorded at the on-going trial; that bullets were fired from one weapon and it is not clear as to which of the four accused held the weapon and fired; that the charge was framed in the year 2017 and that to date the trial has not concluded; that there is

a personal enmity between the parties; that no recovery was effected and that the two parties are of different Muslim faiths and thus a false accusation has been made.

4. The learned D.P.G. has argued that no case for bail has been made out and that there is absolutely no reason for the two injured to falsely accuse the applicant. The learned counsel for the complainant, while assisting the learned D.P.G has adopted her arguments. My observations and findings are as follows.

5. Most of the argument made by the learned counsel for the applicant is based on a deeper appreciation of evidence and an extensive scrutiny of the testimonies that have been recorded at trial till now. For example, she has argued whether private persons were present in the spot or not, why were independent witnesses not cited, which hand did the shooter hold the weapon, how many weapons were there etc. With much respect to the learned counsel these are issues that have to be adjudicated upon after the learned trial court has an opportunity to look holistically at the evidence which will be produced at trial and cannot be decided on a tentative assessment.

6. I disagree with the learned counsel that nothing was found from the scene of the offence as the record reflects that the 6 empties of bullets fired from a 9 mm pistol were found and seized by the police. I also, at this stage, do not see any reason for false implication based on the ground that the parties belong to the Shia or the Sunni faith. The marriage of Talha being the bone of contention for Talha to falsely accuse his in-laws for the shooting also appears at this stage to be far-fetched as the marriage took place nearly a decade ago and the couple has two children. It is pertinent to mention though that the record appears to reflect that in the past too, Talha has been beaten up by his in-laws.

7. I have also noted that in the bail application filed by the applicant before the learned trial court, the primary ground agitated by the applicant was that he was not in Pakistan when the incident occurred and to prove the same he had shown certain stamps on his passport. The learned trial court in the impugned order has observed that upon a tentative assessment of the documents, this claim of the applicant was found to be false and that he was very much in Pakistan at the time. Perhaps this is the reason that the learned counsel did not

agitate this ground during the hearing in this court, though the conduct of the applicant does not shed a positive light on his bonafide.

8. As regards the learned counsel's argument on the delay in trial, it prima facie appears that the delay has been caused due to the conduct of the applicant as well as the fourth accused Sheraz who is still an absconder. The applicant too remained an absconder for some while and primarily it is for this reason that an amended charge was framed on 25.01.2022. The applicant cannot be given benefit for his own lapses.

9. Both Talha and Ismail have received serious bullet injuries, and it prima facie appears that the applicant should have known that his act of firing a number of bullets on the two boys could very easily result in their death. The argument that is usually advanced of being shot at a non-vital part of the body, though not raised by the learned counsel, also appears to be in-applicable as Ismail has been shot in his chest. Fortunately, the two injured witnesses have remained alive to tell their story and there appears, at this stage, no reason for them to make a false allegation on the accused. Of course, it is the learned trial court which will finally decide the matter after it has analysed the evidence collected and recorded at trial.

10. While it has not been raised as an argument by the learned counsel, I have also considered the fact that Saleem Butt and Ashfa Saleem have ostensibly been granted bail. Be that as it may the case of the applicant falls on a different footing and the rule of consistency will not apply.

11. In view of the above, no case for grant of bail has been made out and hence this bail application stands dismissed.

JUDGE