

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1339 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>28th April, 2022</u>	
	<p style="text-align: center;">Ms. Irum Rasheed, Advocate a/w applicant. Ms. Robina Qadir, DPG. Complainant present in person.</p> <p style="text-align: center;">=====</p> <p><u>Omar Sial, J:</u> Wasit Ali has sought pre-arrest bail in crime number 559 of 2021 registered under sections 337-A(iv), 337-A(i) and 504 P.P.C. at the Shahrah-e-Noor Jahan police station. Earlier, his application seeking bail was dismissed by the learned 1st Additional Sessions Judge, Karachi Central on 08.07.2021.</p> <p>2. The aforementioned F.I.R. was registered on 21.06.2021 on the complaint of Majid Khan. Majid reported that on 13.06.2021 he was in the parking area of the apartment building he lives in when one boy by the name of Wahid informed him that another boy by the name of Wasit beats him. When Majid spoke to Wasit on behalf of Wahid, Wasit also hit Majid on his nose, face and other parts of the body.</p> <p>3. The learned counsel for the applicant has argued that there are material differences between what the complainant recorded in the F.I.R. and what the witnesses have stated in their section 161 Cr.P.C. statements; that there is an unexplained delay in the lodging of the F.I.R.; that a fight occurred over a water dispute; that the accused has no past criminal record and finally that the punishments for the offence allegedly committed fall within the non-prohibitory clause of section 497 Cr.P.C. The learned APG has supported the impugned order.</p> <p>4. I have heard the learned counsel for the applicant and the learned APG. The complainant was present but he opted to not engage a counsel. My observations and findings are as follows.</p> <p>5. Wahid, the boy on whose behalf the complainant allegedly got into a quarrel with the applicant is said to be of an unsound mind and is the real brother of Wasit, the applicant. Learned counsel for the applicant has taken</p>

contradictory stances. I find the argument of the learned counsel for the applicant not very convincing. On the one hand she argues that an incident of such a nature did not occur while on the other she argued that the complainant was annoyed with the applicant because the applicant had stopped his brother Wahid from doing manual labour for the complainant. Prima facie I am also not convinced that the injuries sustained by the complainant, as argued by the learned counsel for the applicant, were self-sustained with the sole aim of falsely looping in the applicant in this case.

6. The incident is said to have occurred on 13.06.2021 at 1:00 a.m. but the F.I.R. was registered 8 days later on 21.06.2021. The complainant claims that he had gone to the police station the very same day i.e. on 13.06.2021 but that the police declined to register an F.I.R. saying that they will do so only once the final medical opinion was received. In support of his claim the complainant has put on record a (i) roznamcha entry, (ii) what appears to be an admission slip issued by the Abbasi Shaheed Hospital the date of admission on which is blurred in the copy on record, and (iii) a supplementary medico-legal report issued by the Abbasi Shaheed Hospital dated 21.06.2021. All three documents in the current form are unsatisfactory. The purported roznamcha entry can hardly be read in its original form and prima facie is in an awkward format. The slip from Abbasi Shaheed Hospital (the date of admission on which cannot be read) is also far from being convincing on a prima facie examination it is not even clear as to who the signatory is. All these aspects require to be clarified and that can only be done once the learned trial court has had an opportunity to review the evidence presented to it. Further, the record reveals that according to the F.I.R. the incident occurred at 1:30 a.m. on 13.06.2021. There is an extract of the call received at 15 at 1:25 a.m. made by someone by the name of Asad who reported that a scuffle is ongoing on. The police responded to the call at what appears to be 1:28 a.m. and the policeman who went to the scene reported that everybody who had been fighting has already left the scene. Asad has also recorded his section 161 Cr.P.C. statement in which he stated that he is a resident of the same building and that he saw that the applicant Wasit was one of the several persons who was beating the complainant Majid. Similar statements were recorded by two other residents of the apartment where the incident occurred. The complainant in a statement he recorded subsequently implicated at least 8 other

persons who had beat him. At this stage it cannot be said with certainty that it was the applicant who is solely responsible for the injuries sustained by the complainant. On a tentative assessment, the allegations raised by the complainant and his narration of events require further inquiry.

7. Another aspect of the case is that an offence under section 337-A(i) P.P.C. i.e. *shajjah-i-khafifah* is punishable by payment of daman and may also be punished with imprisonment of either description for a term which may extend to two years as ta'zir. Similarly, an offence under section 337-A(iv) i.e. *shajjah-i-munaqqilah* is punishable by the payment of arsh which shall be fifteen per cent of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir. In both these sections imprisonment is inflicted at the discretion of the Court, which has to exercise the discretion in a judicious manner and keeping the entire circumstances of the case in mind. This is what the learned trial court will do after it has had an opportunity to review the entire evidence holistically. At this bail stage though it cannot be said with certainty that the learned trial court will hand down an imprisonment sentence and even if it did the same would be for a period of 10 years, thus there is a possibility that the offence will fall within the non-prohibitory clause of section 497 Cr.P.C.

8. Malafide of the police appears to be reflected by the fact that one of the witnesses by the name of Rasheed Anwar Khan (who says he saw the fight in which several boys were beating the applicant) was given by him on 04.07.2021 in his own handwriting. This is evident from the police file. However, the police has shown him recording his section 161 Cr.P.C. statement on 23.06.2021. Similar is the case of witness Rasheed Anwar Khan as well as witness Azhar Baig (both also said to have witnessed the fight). I have refrained from commenting further on this issue lest it prejudice the case of either side at trial. It seems that a fight did occur amongst the complainant and some boys, however, whether the applicant is the person who caused the complainant injuries, in view of the above observations, will have to be determined at trial.

9. In view of the above, the interim pre-arrest bail granted to the applicant is confirmed on the same terms and conditions.

JUDGE