

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 86 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

20-03-2023

Mr. Muhammad Naseeruddin, Advocate for applicant.

Ms. Robina Qadir, Addl.P.G.

Ms. Sheza Ahmed, Advocate for complainant.

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Omar Sial, J: Afzal Khan has sought post arrest bail in crime number 633 of 2022 registered under sections 337-A(i), 337-F(ii) and 324 P.P.C. at the Defence police station. Earlier, his application seeking bail was dismissed on 07.01.2023 by the learned 11th Additional Sessions Judge, Karachi South.

2. A background to the case is that the aforementioned F.I.R. was registered on 16.09.2022 on the complaint of Shabana Bibi, the wife of the applicant. Shabana reported that she was woken up at midnight with her husband attacking her with a knife and attempting to slit her throat. He inflicted several knife injuries on her face, back, neck and hands while demanding that she bring him money.

3. I have heard the learned counsels for the applicant as well as the complainant and the learned Addl.P.G. My observations and findings are as follows.

4. It is indeed rare that a lady, from what appears to be a low income group, has come forward and reported domestic violence although the police has not looked at this case from a gender lens and has completely over-looked the fact that the allegation of the survivor may also fall squarely within the domestic violence legislation. There was no reason for Shabana to falsely implicate the applicant as in all probability, keeping the mindset of society at large in view, she perhaps would be the most impacted.

5. The medical reports and photographs on record, upon a tentative assessment, reconcile with the allegations made against the applicant. I am saddened however that the learned counsel for the applicant adopted a

victim blaming approach rather than justify or clarify the conduct of the applicant. When the learned counsel was asked as to why would the wife of the applicant wrongly accuse him, his response was that this is a habit of the survivor as she frequently marries and then blackmails her husbands. He was unable to show even an iota of evidence to support his allegation. It is hoped and expected that we as a society refrain from stereotyping and gender bias. It must not be lost sight of that Pakistan is a signatory to the Convention against Elimination of Discrimination against Women and the State has accepted certain responsibilities under the Convention. At this preliminary stage and upon a tentative assessment, there appears to be some weight in the allegation made by the survivor. The truth will of course be determined at trial.

6. Learned counsel for the applicant has argued extensively that the punishment for the offences with which the applicant is charged all fall within the non-prohibitory clause of section 497 Cr.P.C. and thus the applicant should be admitted to bail. I have considered his argument and although there might be an argument that an offence under section 324 P.P.C. falls within the prohibitory clause of section 497 Cr.P.C., even otherwise, keeping in mind the principles of the Tariq Bashir and 5 others vs The State (PLD 1995 SC 34) in mind, I am still not inclined to grant him the concession of bail. My reasoning is that not only is there a very strong possibility of the applicant influencing the witnesses and tampering with evidence but that keeping in view empirical data, there is also a very strong possibility of the applicant repeating the abuse. The complainant may not be lucky the second time. The fact that this is a domestic violence case, where a woman has been abused, in my view also makes the case fall within the exceptional category of cases as referred to in the Tariq Bashir (supra) case.

7. Bail application stands dismissed.

JUDGE