

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2410 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

22-03-2023

Mr. Muhammad Ashraf Samo, Advocate for applicant.
Mr. Ghulam Mustafa Abro, Advocate for complainant.
Ms. Robina Qadir, Addl.P.G. a/w SIP Muhammad Aslam, I.O.

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Omar Sial, J: Inshal Hassan Khan has sought post arrest bail in crime number 222 of 2022 registered under sections 302, 324, 109, 114, 216-A, 427 and 34 P.P.C. at the Gadap police station. Earlier, his application seeking bail was dismissed by the learned 1st Additional Sessions Judge, Malir, Karachi on 8-11-2022.

2. A background to the case is that the aforementioned F.I.R. was registered on 26.05.2022 at 00:30 hours on the complaint of Arif Sabir who reported an incident which had occurred on 24.05.2022 at 11:30 p.m. He recorded that he was woken up at 2:00 a.m. on 25.05.2022 by a phone call informing him that he should come to the Agha Khan Hospital as his son Shahmeer had been injured. The complainant reached the Hospital and found out that Shahmeer was unconscious and hooked up to a ventilator. Jazlan, who was Shahmeer's cousin told the complainant that he along with Shahmeer and another friend Zargam had gone to visit a friend and on the way back a young boy performing stunts on a motorcycle narrowly missed hitting their car. When the boys reprimanded the motor cyclist, he called his brothers for help and started chasing the boys' vehicle. Soon thereafter some other boys appeared in another vehicle and started shooting at the boys' vehicles. The shooters were identified as Mohammad Ahsan, Mohammad Irfan and Inshal Hassan Khan (the applicant) while Mohammad Hasnain was the boy who was riding the motorcycle. Jazlan died in the shooting whereas a bullet grazed Shahmeer's head injuring him seriously.

3. Learned counsel for the applicant has argued that the applicant was not present; that Shahmeer recorded his section 161 Cr.P.C. statement after a month of the occurrence; that the F.I.R. was lodged with a delay; that the complainant is not an eye witness; that the prosecution has made up the story of Shahmeer being injured; it was a night time incident and therefore how could the shooters be recognized. To the contrary the learned Addl.P.G. who was assisted by the learned counsel for the complainant supported the impugned order. I have heard the counsels. My observations and findings are as follows.

4. The applicant was allegedly one of the shooters. Shahmeer, at no stage had said that he had seen or identified the shooters. The prosecution however has 3 other witnesses who were present on the place of incident who specifically had identified the shooters and it appears that it was on their statements that the names of the accused were included in the F.I.R. 2 out of these 3 witnesses were present during the hearing along with Shahmeer, and once again categorically stated that their identification was correct. These are all very young boys and have no reason whatsoever to falsely implicate the accused. The learned counsel for the applicant did not offer any explanation as to why 3 witnesses would falsely implicate the applicant. To me it appears to be a road rage incident that went horribly wrong.

5. Shahmeer, too, is a young boy. The investigating officer of the case, who could initially not procure the attendance of Shahmeer explained that the boy is still traumatized after the incident and does not leave his house, and when he does it is only to go to Islamabad. Such a young boy who has been shot on his head and seen his friend die of course would be justifiably traumatized. In compliance of Court orders however Shahmeer along with 2 witnesses of the incident and several other family members did finally turn up in Court and the wound on his head was seen. Prima facie the argument of the learned counsel that Shahmeer was not even injured in the incident was not correct. As regards the late recording of the section 161 Cr.P.C. statement, prima facie, it will have little impact on the case as

Shahmeer does not claim to be an eye witness. It cannot be said that the delay in recording the section 161 Cr.P.C. statement was with a view to manipulate the prosecution story. He stands by what was written in the F.I.R. that was registered soon after the incident. I am not inclined therefore to grant any concession to the applicant at this preliminary stage on this account.

6. I find no reason to admit the applicant to bail in view of the eye witness evidence, which at this stage appears convincing to me. Of course the truth will be unearthed by the learned trial court at trial. Another reason I am not inclined to grant bail is that speaking hypothetically if the prosecution version is correct, then there is all possibility that the applicant may pressurize the witnesses and tamper with the evidence or may repeat the offence. The fear on the faces of the victim and his family members was noticeable.

7. Bail application stands dismissed.

JUDGE