

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2159 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

16-02-2023

Mr. Muhammad Ashfaq Ahmed, Advocate a/w applicants.

Mr. Muhammad Nasir, Advocate a/w complainant.

Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: Mohammad Jibran and his wife Ajmaan Jibran have sought pre-arrest bail in crime number 406 of 2022 registered under sections 354, 504 and 337-F(iii) P.P.C. at the Shah Faisal Colony police station. Earlier, their application seeking bail was dismissed on 17.10.2022 by the learned 7th Additional Sessions Judge, Karachi East.

2. The aforementioned F.I.R. was registered on 06.09.2022 by one Ms. Musarat reporting an incident that occurred on 01.09.2022. She recorded that she had gone to pick up her children from school when the 2 applicants came and abused her. Ajmaan Jibran had allegedly hit Musarat on her face with a stone.

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

4. Offences under sections 354 and 504 P.P.C. are both bailable. An offence under section 337-F(iii), though not bailable falls under the non-prohibitory clause of section 497 P.P.C. Keeping in view the principles enunciated in the Tariq Bashir and 5 others vs The State (PLD 1995 SC 34) in mind I find no exceptional or extraordinary grounds to decline the 2 applicants bail. I further notice that the police inserted section 336 P.P.C. at the time it has forwarded the challan to the learned magistrate. Section 336 P.P.C. covers cases of *itlafi-salahiyyat-i-udw* i.e. whoever destroys or

permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause *itlafi-salahiyyat-i-udw*. The medical reports on record do not show that the functioning of any organ of the complainant was impaired or that permanent disfigurement resulted. Upon query from the learned counsel for the complainant as to how an offence under section 336 P.P.C. had occurred he replied that after the complainant was hit with a stone, she had some difficulty in chewing. Upon a tentative assessment, temporary pain while chewing will hardly categorise as a case of *itlafi-salahiyyat-i-udw*.

5. The record also appears to reflect that the parties have not been on very good terms. Mohammad Jibrán had earlier on 07.04.2022 filed a section 22-A Cr.P.C. application before the learned 2nd Additional Sessions Judge, Karachi East seeking protection from certain persons (which included the husband of the complainant) as he had alleged that they had beaten him. Malafide cannot be conclusively ruled out at this stage.

6. The 5 day delay in registering the F.I.R. has remained unexplained, and in the backdrop of the seemingly unhappy relations between the parties, consultations and deliberations cannot conclusively be ruled out at this stage. Mohammad Jibrán has been attributed the role of presence whereas Ajmaan Jibrán is a woman and that fact too entitles her for a greater concession.

7. For all of the above reasons, the interim pre-arrest bail granted to the applicants earlier is confirmed on the same terms and conditions.

JUDGE