

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-678 of 2022
Crl. Bail Application No.S-32 of 2023

Applicant in Criminal Bail Application No.S-678/2022 : Jamaluddin @ Jumo s/o Muhammad Tagial Ansari, through Mr. Syed Imtiaz Ahmed Shah Jilani, Advocate

Applicant in Criminal Bail Application No.S-32/2023 : Rabail @ Raboo s/o Zahid Hussain Ansari, through Mr. Imtiaz Ali Chadhar, Advocate

Complainant : Kaleemullah s/o Muhammad Ismail, through Mr. Umrah Khan Yousufzai, Advocate

Respondent : The State, through Mr. Syed Sardar Ali Shah, Additional P.G.

Date of hearing : 30.01.2023

Date of order : 30.01.2023

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both criminal bail applications as the same, being arisen out of same Crime/F.I.R. bearing No. 317/2022, registered at P.S. Shaheed Murtaza Meerani, Khairpur under sections 324, 148 & 149, P.P.C., have been heard by me together.

2. Through Crl. Bail Application No. S-678 of 2022, applicant/accused Jamaluddin @ Jumo seeks pre-arrest bail, while by means of Crl. Bail Application No. 32 of 2023, applicant/accused Rabail @ Raboo seeks post-arrest bail in aforementioned crime. Their earlier applications for grant of same relief bearing No. 2581 of 2022 and 07 of 2023, respectively, were dismissed by the learned Sessions Judge, Khairpur vide orders, dated 07.12.2022 & 09.01.2023. Applicant Jamaluddin was admitted to interim pre-arrest bail by this Court vide order, dated 21.12.2022.

3. Briefly stated, the facts of the case are that, on 21.11.2022, complainant Kaleemullah lodged the aforesaid F.I.R. alleging therein that, on 18.11.2022

at 2000 hours at Panwari Sim Nali, near village Muhammad Ismail Katohar, the applicants along with co-accused Aqeel Shaikh, Khalil Shaikh and two unknown accused persons, duly armed with pistols, formed an unlawful assembly and in prosecution of the common object of that assembly accused Rabail @ Raboo made straight fire on him, which hit on his left leg, while accused Jamaluddin caused firearm shot to Muhammad Pariyal, the cousin of the complainant, which hit on his left ankle, on which they raised cries which attracted to villagers . The cries of complainant party attracted to village people who came running there, then all the accused run away from the occurrence after issuing them threats for life. As per FIR, motive behind the alleged incident was annoyance of the accused party at complainant over his love marriage with Mst. Saima, the sister of applicant Rabail and niece of applicant Jamaluddin.

4. Heard, Record perused.

5. It appears from the perusal of the record that the applicants are nominated in the F.I.R. with specific role of causing firearm injuries to complainant and eye-witness/injured Muhammad Pariyal, on their left leg and left ankle, respectively, which injuries the MLO has declared as *Ghayr-Jaifah Munaqqillah*, punishable under section 337-F(vi), P.P.C. for imprisonment up to seven years as *ta'zir*. During course of investigation, police recovered one empty of 30-bore pistol from the crime scene. On 27.11.2022, police recovered the pistol on the pointation of the applicant Rabail, which he used in commission of alleged offence. Since it was unlicensed, the said applicant was also booked in FIR No. 323/2022, registered under section 24 of the Sindh Arms Act. The recovered pistol was sent to FSL and matching report of the recovered empty is positive.

6. I am not impressed with the arguments of learned counsel for the applicants that since the FIR is delay by seventy hrs., deliberation and consultation before lodging of the FIR to implicate the applicants falsely cannot be ruled out, and that the injuries allegedly caused to said injured P.Ws. are not on vital parts of their bodies; hence, their guilt calls for further inquiry. It reveals from the FIR that after the incident, the complainant and injured eye-witness were taken to Shah Lateef Police Post from there they got police letter for examination and treatment, then they were brought to Civil Hospital after getting treatment, the complainant lodged the F.I.R. As such, delay in F.I.R. is reasonably explained. The applicant party has inimical terms with the complainant party over love marriage of complainant with Mst. Saima. Offence under section 324, P.P.C., is hit by statutory prohibition. As held by the Apex Court in the case of *Sheqab Muhammad v. The State and others* (2020 SCMR 1486) murderous assault as defined in the section *ibid* draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted, "intention or knowledge" as contemplated by the section *ibid* is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. Every hypothetical question, which could be imagined, would not make it a case of further enquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

7. From the tentative assessment of the material on record, it appears that the prosecution has sufficient evidence against the applicants to connect them with the commission of alleged offence; therefore, they are not entitled to the concession of pre and post-arrest bail; hence, I dismiss both listed criminal bail applications. Consequently, interim pre-arrest bail granted to

applicant Jamaluddin @ Jumo by this Court in CrI. Bail Application No. S-678 of 2022, vide order dated 21.12.2022, is hereby recalled.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits.

JUDGE

Abdul Basit