

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-366 of 2023

Applicant: Noor Hussain son of Hassan Mahar, through Mr. Muhammad Hassan Chandio, Advocate.

Complainant: Mashooque son of Faqeer Muhammad Mallah, through Mr. Imtiaz Ali Chandio, Advocate.

Respondent: The State through Mr. Shahzado Saleem Nahiyoon, Addl.P.G.

Date of hearing: **08.05.2023**

Date of Order: **08.05.2023**

O R D E R

KHADIM HUSSAIN SOOMRO, J:- Through the instant criminal bail application, the applicant/accused above named seeks his post-arrest bail in Crime No.256 of 2021, under sections 324, 504, 34, 337-A(v), 337-L(i) P.P.C, registered at P.S Kazi Ahmed, after his bail plea was declined by the learned 2nd Additional Sessions Judge, Shaheed Benazirabad vide order dated 29.03.2023.

2. In a nutshell, the facts of the prosecution case are that complainant Mashooque lodged a FIR at PS Kazi Ahmed on 12.10.2021 at 1330 hours, stating that he and his father Faqeer Muhammad used to run a woods business and that a dispute was going on between the complainant party and Hassan Mahar regarding financial transactions. They were not speaking terms. On 10.10.2021, complainant, his father, cousin Muhammad Aslam, and Irshad Ali were going towards their houses after finishing their wooden work, when they arrived at a common street near the shop of accused Hassan Mahar, where accused persons namely Hassan Mahar, Noor Hussain (applicant), both holding hatchets, and two unknown accused persons holding lathies came out of the shop, while accused Hassan Mahar abused his father. The applicant accused Hassan Mahar caused hatched below which hit him on temple and the present applicant accused caused hatched below which hit him on left side belly. The complaint party invoked the name of Almighty Allah on the accused parties, who then proceeded to their homes. Thereafter the injured was shifted to PS Kazi Ahmed for a police letter for medical treatment and certificate, afterwards he was transported to RHC Hospital Kazi Ahmed that referred the injury to PMCH, Nawabshah, subsequently this FIR was lodged.

5/10/23

3. The learned counsel for the applicant/accused primarily contended that the applicant/accused was falsely implicated because there was a dispute between the complainant and accused party over a financial matter, and the complainant party attacked the accused persons, but because the complainant party was influential in the community, medical certificates could not be issued to them despite the fact that they sustained severe injuries at the hands of the complainant party. He further claimed that the applicant/accused has been facing trial since the day of his arrest, and that the trial has been delayed due to the prosecution, not the applicant/accused. He has relied on case laws reported in 2022 SCMR 198, 2023 YLR 234, 2010 P.Cr.L.J-307, 2022 YLR-798, and 2023 YLR [Lahore] Note-29 to support his claims.

4. The applicant/accused's name is prominently mentioned in the FIR with a specific role in inflicting a hatchet injury to PW Fakir Muhammad on his left side belly, and all of the PWs have fully supported the prosecution's case, according to the learned counsel for the complainant and the learned Addl. P.G. They said that the applicant's/accuser's counsel acknowledged throughout the course of the hearing that there was a disagreement between the parties on a financial matter, and that consequently, allegedly as a result of this animosity, the accused party has assaulted upon them. They further argued that because the complainant did not intentionally try to link the current applicant/accused to the crime, he is not eligible for bail concession at this time.

5. Heard learned counsel for applicant as well as complainant's counsel and learned Addl. A.G and have perused the record with their able assistance.

6. According to the record, it appears that the applicant/accused is named in the FIR with the specific intent of inflicting a hatchet injury on PW Fakir Muhammad's abdomen. This injury is supported by a medicolegal certificate and a Special Medical Board, and the doctor has classified it as Shajjah-i-Damighah, which presumptively violates Section 324 of the Pakistan Penal Code and is covered by the prohibitory clause of Section 497 Cr.P.C. In addition to the aforementioned, an offence will be subject to the punishment outlined therein if harm is inflicted. The medical evidence supports the ocular evidence, and the prosecution witnesses, Muhammad Aslam and Irshad Ali, have also backed the complainant's version of events and implicated the applicant in the commission of the offence in their 161 Cr.P.C statements. Accordingly, there is enough evidence on file linking the applicant/accused to the alleged crime. Furthermore, the incident happened in broad daylight; as a result, neither the applicant/accused nor his involvement in the crime were mistaken for someone else.



3/5/2023

7. Regarding the case law cited by the applicant's counsel, the case of SIKANDAR HAYAT v. THE STATE reported in (2022 P.Cr.L.J-198), in this case law all of the accused parties were given a general role of firing, whereas the present applicant accused has got a specific role. He also cited the case of NIAZ v. THE STATE and another (2023 YLR-234) however there was a discrepancy between the medical and ocular versions since the medical certificate listed two injuries but the police file included just one injury. However, in this instance, the medical data strongly concurs with the eyewitness narrative. Additionally, counsel cited the case of ZAINUL ABDIN v. THE STATE (2010 P.Cr.L.J-307), however neither the accused nor the alleged offender were named in the FIR or the 161 Cr.P.C. statements of PWs that implicated him in the alleged offence. Even yet, the applicant/accused is heavily cited in the FIR in the current case, and the PWs have also implicated him in their 161 Cr.P.C. testimonies. Similar to how the defence counsel for the applicant/accused cited the case of MAQBOOL AHMED and others v. THE STATE (2022 YLR-798) however in this instance the accused was released on bail after raising the argument of rule of consistency. The learned counsel also cited the case of MUHAMMAD ASLAM v. THE STATE (2023 YLR Note-29), although in this instance the accused was not present at the scene of the incident and was found to be innocent during the course of the investigation. However, the facts of the current case are significantly different from the facts of the case laws that the applicant's/accused's counsel has cited.

8. I am fully convinced and fortified with the case of GHAZAN KHAN v. Mst. AMEER SHUMA and another (2021 SCCR-1157), wherein it is held that:-

"Reliance upon a statement, purportedly made by the injured and recorded by the Investigating Officer in case diary dated 11.02.2020, surprisingly annexed with the petition, wherein he exclusively blamed Hashmand co-accused for the injuries on his person is entirely beside the mark, besides being violative of sub section (2) of section 172 of the Code of Criminal Procedure, 1898 and, thus, this petition, with disapproval, is liable to be dismissed on this ground alone. Even otherwise having regard to the totality of circumstances where under, the petitioner is alleged to have actively participated in the occurrence, that squarely constituted mischief of section 324 of the Pakistan Penal Code, 1860, punishable with imprisonment for a period of ten years, attracting the bar that cannot be circumvented in the face of 'reasonable grounds' as contemplated by section 497 of the Code, view taken by the courts below being well within the remit of law calls for no interference. Petition fails. Leave declined."

9. In case of Major (R) MUHAMMAD IFTIKHAR KHAN v. THE STATE and another (2022 SCCR-885) wherein the Supreme Court of Pakistan has observed that


8/5/2023

delay in the conclusion of the trial is not the basis on which bail could be granted as a matter of right. Under these circumstances, there is sufficient material on the record to connect the applicant/accused to this offence, and prima facie, there appear reasonable grounds for believing that he has committed the alleged offence. The bail was declined with directions to the trial court to conclude the trial expeditiously. In this regard, I am persuaded with the case of *REHMATULLAH v. THE STATE and another* (2011 SCMR-1332) wherein it has been held as follows:-

"The Courts should not grant or cancel bail when the trial is in progress and proper course for the Courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously."

10. In view of the above discussion, in my tentative assessment at the bail stage, I am of the opinion that prima facie there is sufficient material available on record to connect the applicant/accused to this offence, as there appear to be reasonable grounds for believing that he is involved in the commission of this offence; therefore, he is not entitled to a concession of bail at this stage. The learned counsel for the applicant has failed to make out a case for bail or point out any malice on the part of the complainant. Consequently, the instant bail application is **dismissed**. **However**, the learned trial court is directed to expedite the case and conclude it, preferably within the period of forty five (45) days after receipt of this order.

11. Needless to state that the observations hereinabove are tentative, and nothing herein shall be construed to prejudice the case of either side at trial.

