

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-237 of 2023

Applicant: Mitho son of Rano Khan Khoso, through Mr. Ali Raza Channa, Advocate.

Complainant: Muhammad Anwar son of Leemoon Khan through Mr. Altaf Sachal Awan, Advocate.

Respondent: The State through Ms. Rameshan, Assistant Prosecutor General, Sindh.

Date of hearing: **04.05.2023**
Date of Order: **04.05.2023**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant criminal bail application, the applicant above named seek his post-arrest bail in Crime No.29 of 2022, under sections 324, 337-H(ii), 337-F(vi), 337-F(iii), 147, 148, 149 P.P.C, registered at P.S Kazi Ahmed, after his bail plea was declined by the learned IInd Additional Sessions Judge, Shaheed Benazirabad vide order dated 01.03.2023.

2. The details and particulars of the F.I.R. are already available in the bail application and crime report, same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicant / accused is innocent has falsely been implicated in this case; that FIR is delayed about four days no plausible explanation has been furnished by the complainant; that prior to this incident one Mumtaz Ali lodged FIR under sections 302, 337-H(ii), 109 and 34 P.P.C wherein one person namely Muhammad Rajab alias Nano Khoso has lost his life in order to make counter case this FIR was registered by the complainant; that during course of investigation the name of applicant was placed in column No.2 and finally released him being innocent in this case but subsequently he was booked in present crime; that doctor has declared the injury sustained by injured punishable punishable under section 337-F(iii) P.P.C carrying maximum punishment provided by law of three years and it is yet to be seen at the time of trial whether applicant / accused was present or section 324 P.P.C misapplied in this case; that when the case was matured the complainant party malafidely with ulterior motives filed transfer application which is pending before this Court, as such, no progress has been made before the learned Trial Court. Lastly, he prayed for grant of bail. In support of his contentions, he has relied upon the cases of *Muhammad Umar Waqas Barkat Ali Vs. The State and another* **[2023 SCMR 330]**, *Chaudhry Nadeem Sultan Vs. The State through P.G. Punjab and another* **[2022 SCMR 663]**, *Ehsan Ullah Vs. The State* **[2012 SCMR 1137]**, *Rehman and 2 others Vs. The State* **[2007 MLD 587]**, *Rehmatullah Vs. The State & others* **[SBLR 2012 Sindh 113]** and copy of order dated 22.11.2021 passed by this Court in Criminal Bail Application No.S-1038 of 2021.

4. On the other hand, learned counsel for complainant submits name of applicant / accused appeared in the FIR with specific role that he has fired upon Muhammad Hashim, as such, he is not entitled for bail. He also pleaded that present applicant is involved in 9 similar other cases but when counsel was confronted he replied that both parties lodged FIR against each other. Lastly, he prayed for dismissal of instant Criminal Bail Application. In support of his contentions, he relied upon the case of *Aurangzeb Vs. The State and others* **[2022 SCMR 1229]**.

5. Learned Assistant Prosecutor General, Sindh also supported the contentions of learned counsel for complainant prayed that instant bail may be dismissed.

6. I have heard learned counsel for the parties and gone through the material available on the record.

7. Admittedly, the FIR being Crime No.20 of 2022 was lodged by nephew of complainant on the very same date viz. 02.02.2022 and thereafter the complainant party lodged present FIR with delay of about four days being Crime No.29 of 2022 but no plausible explanation has been furnished. Per learned counsel the injury attributed to present applicant / accused under section 337-F(iii) P.P.C which maximum punishment provided by law is only three years same does not fall within the prohibitory clause of section 497 Cr.P.C. The role assigned against applicant is that he has fired from his repeater upon injured Muhammad Hashim and it is yet to be determined at the trial after recording evidence whether section 324 P.P.C is applicable in this case or not. Further, prior to this one Muhammad Rajab alias Nanoo lost his life wherein injured of this case has been shown as accused who attacked upon accused party so it would be determined at the time of trial who is aggressor who is actually aggressed upon. Further, the case has been challaned and the custody of applicant is no more required so no purpose would be served to keep him in jail for indefinite period. More so, the applicant / accused is in jail and no progress has been made before the learned Trial Court. Learned counsel for the applicant pointed out when the case was ripe-up complainant moved application before this Court for transfer of the case from one Court to another Court, as such, delay is on the part of complainant who is deliberately avoiding to proceed with the matter. It has been pointed out by learned counsel for applicant in all the cases applicant has been granted bail by the competent Courts of law. He also pleaded enmity between the parties. In such circumstances, the learned counsel for the applicant/accused has made out a case for grant of post-arrest bail in view of subsection (2) of section 497 Cr.P.C, resultantly the instant bail application is allowed and the applicant/accused is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R. bond in the like amount to the satisfaction of learned Trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature would not influence the learned Trial Court while deciding the case of either party at trial.

JUDGE