

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 233 of 2023

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant:	Rasool Bux alias Bobi son of Rabo Parhyar, through Mr. Ghulam Rasool Soho, Advocate.
The State:	Through Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.
Complainant:	Razzaq Ali (present) through Mr. Imdad Ali Saheto, Advocate.
Date of hearing:	15.03.2023.
Date of order:	15.03.2023.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Rasool Bux alias Bobi seeks his release on post arrest bail in Crime No.34 of 2022 of P.S Mirpur Bathoro, Sujawal, under Section 337-F(iv), 506/2, 114, 504, 34 PPC. The case has already been challaned by the police on 16.03.2022 which is now pending for trial before the Court of Civil Judge & Judicial Magistrate, Mirpur Bathoro vide Criminal Case No.43/2022 (re-the State Versus Dost Ali and others). The applicant filed post arrest bail application before the trial Court which was declined on 08.11.2022. He, therefore, filed second bail application before the Court of Sessions vide Criminal Bail Application No.1703/2022 which subsequently was assigned to Addl. Sessions Judge, Sujawal, where after hearing the parties, the request made by the accused for bail before Addl. Sessions Judge, Sujawal, has also been turned down vide its order dated 13.12.2022; hence, instant bail application has been maintained.

2. The crux of the prosecution case is that complainant himself is not an eye-witness; however, per his version, he was informed by his brother Niaz Hussain that on 28.02.2022 applicant along with co-accused had come and

were using abusive language that why they had registered case against them; hence they will not be spared. On instigation of other accused, applicant / accused Bobi Parhyar caused hatchet blow to P.W Niaz Hussain meanwhile, his sister namely Mst. Imamzadi came and hugged Niaz Hussain, therefore, injury went to hit her at her right arm and she fell down and later all the accused decamped from the scene of offence while complainant party shifted the injured PW to hospital where after providing due treatment to her, complainant came at P.S and lodged instant FIR.

3. Learned counsel for the applicant submits that FIR is delayed for about two days and the parties are already on inimical terms over landed dispute as well as previous litigation. Next submits that injury allegedly attributed to the applicant is on non-vital part of the body of injured and no fracture has been caused, therefore, submits said injury, as per medico legal evidence, has been declared to be punishable under section 337-F(iv) PPC which carries maximum punishment up to five years. Lastly submits that co-accused have been bailed out, therefore, by considering inimical aspect between the parties, case against applicant requires further inquiry; hence, he may be enlarged on bail. In support of his contention, learned counsel places reliance upon the cases of *HIDAYAT KHAN Versus The STATE and another* (2023 SCMR 172), (ii) *SALEEM KHAN Versus THE STATE* (1999 P.Cr.L.J 140), (iii) *ZAHID NASEER Versus THE STATE* (2003 P.Cr.L.J 1582) & (iv) *SHAHID Versus The STATE and another* (2017 YLR 2486).

4. On the other hand, learned Addl. Prosecutor General, Sindh appearing for the State, opposes the bail application on the ground that applicant remained fugitive from the law for about six months, therefore, he does not deserve any leniency in shape of bail. She; however, could not controvert the fact that injury allegedly sustained by the injured is on her non-vital part of the body; besides, it carries maximum punishment up to five years.

5. Learned counsel for the complainant also opposes the bail application and submits a copy of final medico legal certificate under the cover of his statement dated 15.03.2023, taken on record. He further submits that accused is nominated in the FIR with specific role of causing injury to

Mst. Imamzadi and per medical evidence bone has been exposed. He, therefore, submits that he is not entitled for the bail. In support of his contention, learned counsel places reliance upon the cases of (i) *MUKHTAR AHMAD Versus The STATE and others* (2016 SCMR 2064), (ii) *Syed HAMAD RAZA Versus The STATE and others* (2022 SCMR 640), (iii) *JUMO KHAN alias MUHAMMAD JUMAN and 5 others Versus The STATE* (2021 YLR Note 68), (iv) *MUHAMMAD RAFIQUE Versus The STATE and others* (PLD 2022 Supreme Court 694) & (v) *HAJI BEHRAM Versus The STATE and others* (2021 SCMR 1983).

6. **Heard arguments, record perused.** Admittedly, the FIR is delayed for about two days for which no plausible explanation has been furnished by the prosecution. The complainant himself has admitted enmity with accused over landed dispute as well as previous litigation. The injury allegedly sustained by alleged injured Mst. Imamzadi is on her non-vital part of the body and no fracture has been caused to her. Said injury as per medico legal evidence carries maximum punishment up to five years and thus does not exceed limits of prohibitory clause of section 497 Cr.P.C. In this regard, reliance can be placed upon the cases of *DUR MUHAMMAD Versus The STATE* (1994 P.Cr.L.J 1769) as well as *MUHAMMAD TANVEER Versus The STATE and another* (PLD 2017 SC 733). In case of Muhammad Tanveer (Supra), learned Apex Court has laid down in para-6 of the esteemed order as under;_

"6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

7. Moreover, the case is being tried by the Court of Civil Judge & Judicial Magistrate where after recording evidence of the prosecution witnesses, if prosecution may succeed to prove its charge against the applicant even then punishment of more than three years cannot be

visualized. The case law relied upon by learned counsel for the complainant is on different footings and has no relevancy with the facts and circumstances of present case.

8. The upshot of above discussion is that applicant has successfully made out a good prima facie case for his release on bail within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Rasool Bux alias Bobi son of Rabo Parhyar**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

9. It may be pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, learned trial Court may proceed against the applicant, if he is found misusing the concession of bail.

10. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A