

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-175 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

31.03.2023.

Mr. Muhammad Hashim Laghari advocate for the applicant.
Mr. Abdul Waheed Bijarani Assistant Prosecutor General.
Mr. Wafa Nawaz Ali Shah advocate for complainant.
Inspector Muhammad Tahir I.O. of case.
Applicant is present on ad-interim pre-arrest bail.

O R D E R

MUHAMMAD IQBAL KALHORO, J:- As per FIR on 04.02.2023 at 2345 hours complainant party was present in marriage ceremony of co-accused Tauqeer Malik when applicant along with his relatives and brother Umair came over there. No sooner did they come than they started abusing nephew of complainant namely Shahid Pathan over a dispute concerning upgradation of Shahid as Supervisor by the management of Boulevard Mall. After abusing Shahid, co-accused Umair took out a pistol from his fold and fired at Shahid hitting his head. He fell down and was referred for medical treatment to the hospital. It is stated that still he is in coma and has not gained consciousness.

Notwithstanding, role attributed to applicant is of his presence in marriage ceremony along with main accused Umair who has caused the one and only injury to the victim Shahid. Not only applicant but other co-accused who are also nominated by the complainant in FIR were also present, and out of whom co-accused Muhammad Aslam who has been assigned similar role has been granted pre-arrest bail by the trial Court on the ground that no active role has been attributed to him. The likewise ground is also attracted in the case of present applicant as although he is shown present at the spot but not assigned any role. He was not armed with any weapon and even FIR does not show that he had instigated or even incited the main accused to commit this offence. FIR does not show, prima facie, that there was any dispute of the complainant or the

victim with the present applicant. It is apparent that he has been booked in this case for two reasons: he is brother of the main accused and he was present on the spot. But the question whether these both reasons would attract applicability of Section 324 PPC against him is a question which cannot be decided in favor of the prosecution on tentative assessment of the material available on record at this juncture. The I.O. is present has submitted that custody of applicant is required only for interrogation from him about whereabouts of the main culprit namely Umair who has since absconded. As far as role of the applicant himself is concerned, he has admitted that his custody is not required. Citing this whole material, learned defence counsel has pleaded for confirmation of bail, whereas learned counsel for the complainant and learned APG have opposed bail to the applicant. Learned counsel for the complainant has relied upon the case law reported as 1982 SCMR 384, 2016 P.Cr.L.J Note 73 and 2015 P.Cr.L.J 1531 in support of his arguments.

Be that as it may, in this case, keeping in light the above discussion, I am of the view that the case against the applicant on account of no active role assigned to him and his mere presence at the spot requires further inquiry. His custody is not required by the police qua his part in the crime, but for ascertaining the whereabouts of the main culprit, which infact is duty of the police to perform and for this purpose, the right to liberty of applicant cannot be overlooked. However, at the same time, it may be stated if for interrogation for such purpose the applicant is required, the I.O. would be at liberty to issue a notice to him under Section 161 CrPC and if such notice is issued to the applicant he shall fully cooperate with Investigating Officer and submit himself for the purpose of interrogation.

Apart from above, I cannot ignore the fact that the trial Court has already granted bail to co-accused Muhammad Aslam having been assigned identical role: his presence at the spot like applicant. And therefore, attraction of principle of rule of consistency in this case cannot be disputed. The case law relied by learned counsel for complainant being distinguishable in respect of facts is not attracted. Accordingly, the bail application is allowed and ad-interim pre-arrest

bail granted to him vide order dated 23.02.2023 is hereby confirmed on the same terms and conditions.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE

Irfan Ali