

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

CrI. Bail Application No.S-57 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A No.288/2023.
2. For hearing of main case.

16.10.2023

Mr. Zulfiqar Ali Laghari, Advocate for the applicant.
Mr. Mehboob Ali Kapri, Advocate for the complainant.
Mr. Shahzado Saleem, Additional Prosecutor General Sindh.

ORDER

Shamsuddin Abbasi, J. The applicant Ghulam Mustafa seeks post arrest bail in F.I.R. No. 60 of 2023 of police station Tando Jan Muhammad for offence under sections 324, 337-A(i), 337-F(v), 337-L(ii), 504 and 34 P.P.C., after rejection of his bail plea by learned trial court vide order dated 15.09.2023.

Brief facts of the prosecution case are that on 07.08.2023 applicant along with an unidentified accused came at the place of incident and caused hatchet injuries to complainant on his head, wrist and leg. Learned counsel for the applicant has contended that applicant is innocent and has been falsely implicated in this case due to family dispute between the parties and the complainant party has registered four F.I.Rs against the applicant in order to drag him in false criminal cases; that there is delay of 17 days in lodging of F.I.R without any plausible explanation; that offence does not come within the prohibitory clause of section 497 Cr.P.C.; that no weapon has been recovered from possession of the applicant; that he is behind the bars since his arrest without any progress in his case. He finally prayed for grant of bail application.

Learned Additional Prosecutor General assisted by learned counsel for the complainant has contended that applicant is nominated in F.I.R. with specific role and challan has been submitted and case is fixed for framing of charge. However, he admitted that no incriminating material has been recovered from his possession.

Heard learned counsels for the respective parties and perused the material available on record

Admittedly, there is delay of 16 days in lodging of F.I.R. without furnishing plausible explanation and in background of enmity it cannot be ruled out that F.I.R. has been lodged after deliberation and consultation. From perusal of record, it appears inconsistency between F.I.R. and medical certificate. As per F.I.R. complainant has sustained 3 injuries on wrist, head and leg, whereas medical certificate shows 4 injuries and all the injuries mentioned in the Final Medical Certificate are bailable except single injury on the wrist which is declared as Ghayr Jaifah Hashimah U/s 337-F(v) which is punishable for 5 years, which does not fall within the prohibitory clause of section 497 Cr.P.C. It is alleged in the FIR that applicant caused sharp side hatchet injury on the head of complainant and same is simple in nature and declared as Shuja e Khaffifah u/s 337 A(1) P.P.C. and is bailable. This aspect of the case has created doubt about applicability of section 324 Cr.P.C. which is yet to be determined at the trial. No any incriminating material has been recovered from the possession of applicant. Challan has been submitted and still charge has not been framed and the applicant is behind the bars since 29.08.2023 without any progress in the trial. No fruitful purpose would be served if the applicant is left in jail for indefinite period. Reliance in this regard is placed on the case reported in PLD 2004 SC 477. It is settled law that bail

cannot be withheld as punishment, as held in the case reported in 2021 SCMR 2086. Moreover, rule in cases of bail in offences not falling within the prohibitory clause of section 497 Cr.P.C. is grant of bail and its refusal is exceptional as held in the case of **Muhammad Tanveer Vs. The State** reported in PLD 2017 SC 733.

Prima facie, sufficient material is available on the record which calls for further enquiry in terms of section 497(2) Cr.P.C. The applicant is admitted on bail subject to furnishing a solvent surety in the sum of Rs.50,000/- (Fifty Thousand) and a P.R bond in the like amount to the satisfaction of the learned trial court. The above observations and findings are tentative in nature and will not effect the nature and decision of trial case.

JUDGE

Bilal