

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2069 of 2023

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Date

Order with signature of Judge

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For hearing of bail application

**23.11.2023**

Mr. Aswad Ali Chuhan advocate for the applicant  
Mr. Talib Ali Memon, Assistant PG alongwith Mr. Muhammad Yaqoob  
Khokhar, DPP  
Mr. Ali Gohar Masroof advocate for the complainant  
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Through this bail application under Section 497 Cr.P.C., the applicant Muhammad Sohail Khan alias Shina has sought admission to post-arrest bail in F.I.R No.160/2023, registered under Section 324/34 PPC at Police Station Shershah, Karachi. The earlier bail plea of the applicant has been declined by the learned Ist Additional Sessions Judge Karachi (West) vide order dated 29.08.2023 in Criminal Bail Application No. 4077/2023.

2. Accusation against the applicant is that he in connivance with his accomplices fired upon the Complainant, who sustained a gunshot on the left leg under the knee. Upon his hue and cry they ran away from the spot, thereafter he was taken to Civil Hospital for treatment, such report of the incident was given to the Police Station Shershah on 20.07.2023, who registered the F.I.R No. 160/2023, under Section 324/34 PPC against the applicant.

3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case. The learned counsel submitted that the complainant and his two other companions without any reason started quarreling with the applicant and also beating him because of which the applicant's left thumb got injured and fractured the complainant has a bad character person in the area and the offense which is registered by the police does not fall within the ambit of prohibitory clause Section 497 Cr. P.C. and this matter requires further inquiry into the guilt of the applicant/accused. He lastly prayed for allowing the bail application.

4. Mr. Ali Gohar Masroof advocate for the complainant has contended that the applicant/accused has been nominated in the FIR and a specific role has been assigned in respect of firing upon the complainant with the intention of killing. He further argued that PW injured in his statement under Section 161 Cr. P.C. fully supported the case on the same

footing and the contention of learned counsel for the applicant keeps no force that Section 103 Cr. P.C. was violated. He has further argued that MLC is on record which proves the injury sustained by the injured. He next contended that the offense punishable under Section 324 PPC falls under the prohibitory clause of Section 497(1) Cr. P.C. He lastly prayed for dismissal of the instant bail application.

5. Mr. Talib Ali Memon, Assistant PG along with Mr. Muhammad Yaqoob Khokhar, DPP has supported the argument of the learned counsel for the complainant and has opposed the grant of bail to the applicant.

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

7. Tentative assessment of the record reflects that the applicant in connivance with his accomplices fired upon the Complainant, who sustained a gunshot on the left leg under the knee. Upon his hue and cry they ran away from there thereafter he was taken to Civil Hospital for treatment, such report of the incident was given to the Police Station Shershah on 20.07.2023, who registered the F.I.R No. 160/2023, under Section 324/34 PPC against the applicant. The recovery of the crime weapon has been effected from the applicant; and, MLO has declared the injury as G.J Munaqilla. It seems that the punishment for the offense under section 324, P.P.C. is the imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall, in addition to the imprisonment and fine, be liable to the punishment provided for the hurt caused. In principle, the essentials to prove an offense under Section 324 PPC are:

- i) *Nature of the Act: The act attempted should be of such a nature that if not prevented or intercepted, it would lead to the death of the victim.*
- ii) *Intention or knowledge of committing the offense: The intention to kill is needed to be proved clearly beyond a reasonable doubt. To prove this, the prosecution can make use of circumstances like an attack by dangerous weapons on vital body parts of the victim, however, the intention to kill cannot be measured simply by the seriousness of the injury caused to the victim.*
- iii) *Performance or execution of offense: The intention and the knowledge resulting in the attempt to murder by the accused is also needed to be proved for conviction under the section.*
- iv) *The act by the offender would cause death in its ordinary course.*

8. In the instant case, the complainant has sustained the injury on his left leg, and the principles as set forth for attracting section 324, P.P.C. is

available; and prima facie the intention to kill cannot be measured simply by the seriousness of the injury caused to the victim, which shows the intention of the applicant as to whether he intended to commit murder or otherwise is a function of the learned trial Court, however, at the same stage I am cognizant of the fact that the offense under section 324 PPC entails punishment up to 10 years and attracts the stringency of the prohibitory clause of section 497 Cr.P.C. however, the concession of post-arrest bail can be extended to an accused if the reasonable grounds to connect him with the commission of a crime are found lacking, however, in presence of a corroborative piece of evidence i.e. crime empty and/or crime weapon has been effected and needs to be thrashed out by the trial Court. Moreover, the crime empty has been secured from the place of the incident and matched with the crime weapon as per the FSL report, which has been secured and prima facie does not create any doubt in the prosecution story. Besides above CRO of the applicant speaks a lot as such the concession of bail can only be extended when accused shows malafide on the part of complainant, where as the complainant has received firearm injury on his leg and directly involved the applicant in crime.

9. The contention of the learned counsel that the case of the applicant squarely falls within the ambit of section 497(2), Cr.P.C. is concerned, the said provision reveals the intent of the legislature disclosing pre-condition to establishing the word "guilt" against whom an accusation is leveled has to be established based on reasonable ground, however, if there exists any possibility to have a second view of the material available on the record then the case advanced against whom the allegation is leveled is entitled for the relief in the spirit of section 497(2), Cr.P.C. On the aforesaid principle, I am supported by the view of the Supreme Court in the case of in case of *Muhammad Tanveer vs. the State* (PLD 2017 S.C. 733). However, in the present case, the incriminating material collected by police as discussed supra is sufficient to discard the point of view of the applicant at this stage.

10. In view of the above discussion, learned counsel for the applicant/accused has failed to make out a prima-facie case for a grant of post-arrest bail to the applicant, which is accordingly dismissed. The learned trial Court is directed to examine the complainant within one month and if the charge is not framed the same shall be framed on the next date of hearing. And if from the statement of the complainant any material comes in favour of the applicant he may repeat his bail plea which shall be decided on merits based on evidence.

11. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE