

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2731 of 2023

| Date | Order with signature of Judge |
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For hearing of bail application

**20.12.2023**

Mr. Iftikhar A. Shah advocate for the applicant / accused  
Mr. Talib Ali Memon, Assistant PG  
Mr. Sumair Hassan Khokhar advocate for the complainant alongwith  
complainant Mst. Qurat-ul-Ain

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Through this Criminal Bail Application, the applicant Muhammad Zuhaib seeks post-arrest bail in Crime No.856/2023, registered under Sections 336/337/- A(i)/109/34 PPC at PS Malir City Karachi. Earlier his bail plea has been declined vide order dated 27.11.2023 passed by learned IV-Additional Sessions Judge Malir Karachi. His earlier bail plea has been declined by the trial court vide order dated 27.11.2023 in Cr. Bail Application No. 5430 of 2023 on the premise that the complainant received injuries on her face which was declared as Shuja-e-Khafifa and Itlaf-e-Salahiyyat-i-udw, punishable under Section 336 PPC for Qisas or Arsh and imprisonment of either description for 10 years.

2. The facts of the case are already mentioned in the bail application therefore there is no need to reproduce the same.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives. He has also contended that all sections incorporated in FIR areailable except section 336 PPC, which does not fall under the prohibitory clause of section 497 Cr.P.C. He next contended that the alleged incident took place on 11.11.2023 where FIR was lodged on 18.11.2023 with a delay of seven days in the lodgment of FIR, without plausible explanation. He has also argued that there is a dispute between husband and wife and applicant/accused Zuhaib allegedly threw a cup of tea on the wall and suddenly, bounced and hit his wife on her face which caused injury near her eye. Learned counsel has relied upon the statement dated 20.12.2023 supported by the memo of the place of incident, Final Medico Certificates, Statement of Mr. Shahnawaz (Tenent) Statement of Mst. Shaheen Sultana (Mother of the applicant) and Statement of Mst. Hafiza Bano argued that the alleged incident took place mistakenly and there was no intention of the applicant to cause injury to his wife/complainant. In support of his contention he relied upon the cases of Jamaluddin @ Zubair v The State

**2012 SCMR 573, *Tariq Iqbal v The State* 2012 SCMR 575, *Abdul Khaliq v The State* 1996 SCMR 1553, *Zafar Iqbal v Muhammad Anwar and others* 2009 SCMR 1488, *Muhammad Saeed Mehdi v The State and others* 2002 SCMR 282 and *Abdul Rehman @ Muhammad Zeeshan v The State* 2023 SCMR 884.** He has lastly prayed for a grant of bail to the applicants/accused.

4. Learned APG for the State assisted by the learned counsel for the complainant has opposed for grant of this bail application. The learned counsel for the complainant has submitted that the name of the applicant/accused is transpired in the FIR with a specific role of causing grievous injuries on her face. He next submitted that the applicant/accused started beating her with a tea cup due to which she became injured and sustained injury on her left eye and her other body parts resulting in the loss of her vision; the medico-legal report suggests that some hard and blunt substance was used which hit the eye of the complainant due to which she sustained three injuries as two injuries were declared to be Shujjah-e-Khafifa & Itlaf-i-salahiyyat-i-udw. He added that the offence under Section 336 PPC is punishable for Qisas, or Arsh, and imprisonment of either description for 10 years. He prayed for the dismissal of the instant Criminal Bail Application.

5. I have heard the arguments of the parties and perused the record and case law cited at the bar.

6. The tentative assessment of the record reflects that the complainant has received serious injury on her face; resultantly she has lost the vision of one eye. The Medico-Legal Officer has declared the injury as Itlaf-i-Salahiyyat-udw, punishable under Section 336 PPC for Qisas, Arsh, and imprisonment of either description for 10 years. The applicant is nominated in the FIR for a specific role. The injury attributed to the applicant is duly supported by the Medico-Legal Certificate which falls under Section 336 PPC. The witnesses of the incident are yet to be examined by the Trial Court and the statement of the complainant needs to be recorded. The Medical report prima facie suggests that the complainant lost her left eye vision after trauma, therefore the judicial propriety demands the complainant must be examined by the Trial Court within one month positively, and thereafter if any evidence comes in favor of the applicant he may repeat the bail application before the Trial Court first who shall be decided based on the statement of the complainant, if the charge is not framed the same shall be framed on the next date of hearing and the complainant must be examined. MIT-II is directed to seek compliance with the order within time and if the Trial Court fails to

comply with the directions as discussed above. The appropriate order shall be passed including directing the MIT II to place the matter before the competent authority for appropriate order on the administrative side.

7. In view of the above facts and circumstances of the case, the bail application of the applicant is dismissed in the above terms. However, the observation recorded hereinabove is tentative which shall not prejudice the parties at the trial. The case law cited supra does not support his case because of the injury sustained by the complainant.

JUDGE