

# THE HIGH COURT OF SINDH, KARACHI

## Criminal Bail Application No. 1542 of 2023

### For hearing of Bail Application.

Applicant/Accused : Naveed Shah son of Majeed Shah through Mr. Asif-ur-Rehman, Advocate, alongwith Applicant.

Complainant : Mst. Noor Bibi wife of Syed Aziz Shah, through Muhammad Saleem Qureshi, Advocate, alongwith Complainant and the injured Faiza.

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General, Sindh.

Date of hearing : 14-09-2023

Date of order : 14-09-2023

*FIR No. 201/2023  
U/s: 337-A(i), 337-A(iv)PPC  
P.S. Shah Faisal Colony*

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicant/Accused seeks pre-arrest bail after the same has been declined by the Additional Sessions Judge-XIII, Karachi (East) by order dated 06-07-2023.

2. The Applicant and the person he allegedly injured, namely Faiza, are husband and wife. The Complainant is Faiza's mother who lodged FIR on 30-04-2023 alleging that on 08-04-2023 the Accused had severely beaten Faiza causing internal injuries to her nose, head, stomach and back. The FIR was lodged in view of a medico-legal report which classified injuries suffered by Faiza under sections 337-A(i) and 337-A(iv) PPC.

3. Learned counsel for the Applicant submits that the Applicant was not at home at the relevant time; that Faiza had gone out to see relatives and had returned home with those injuries; that the medico-legal report is after 5 days of the alleged incident, and the FIR is delayed by 21 days, which is enough to doubt the allegation against the Applicant. On the other hand, learned counsel for the

Complainant submits that after giving Faiza a beating the Applicant had detained her in the house for 5 days, and as soon as she was able to leave the house she went to the Complainant for help. The injured, Faiza, present in Court vociferously opposes bail. She states that this was not the first time that she had been severely beaten by the Applicant and that she was no longer willing to reconcile with the Applicant. The learned APG Sindh submits that the medico-legal report supports the allegation.

4. Heard learned counsel and the learned APG Sindh.

5. The medico-legal reports dated 13-04-2023 describe Faiza's injuries as a bruise below the right eye; swelling and bruise on the left eye; swelling on the forehead; and swelling over the nasal bridge; with it being determined that the injuries were 5 days old and caused by a hard and blunt weapon, classifiable as *shujjah-i-khafifah* and *shujjah-i-munaqillah*, punishable respectively under sections 337-A(i) and 337-A(iv) PPC. Therefore, even though Faiza's medical examination was on the fifth day of the alleged incident, the fact that she did suffer the stated injuries on the date mentioned in the FIR does not appear to be doubtful at this stage.

6. While the offence under section 337-A(i) PPC is non-cognizable and bailable, the offence under section 337-A(iv) is cognizable and non-bailable. Though the latter offence is punishable by arsh, and imprisonment upto 10 years as tazir may or may not follow, it would be premature to consider that aspect or the exceptions to such imprisonment for the purposes of deciding pre-arrest bail. It is settled law that grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations as for example to protect innocent persons against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or an alternative to post-arrest bail.<sup>1</sup>

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<sup>1</sup> *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427).

7. Though there is some delay in lodging the FIR, that is adequately explained by the fact that the parties are husband and wife, and in such cases it is not unusual for the wife to mull over her future with the man who abuses her.

8. Apart from the FIR, it is the statement of the injured herself that nominates the Applicant as the offender. Thus far there is nothing to doubt that statement, nor to show that the arrest of the Applicant being sought for investigation is malafide which remains the primary test for the grant of pre-arrest bail.

9. For the foregoing reasons, the Applicant/accused Naveed Shah has not made out a case for pre-arrest bail. Hence, the ad-interim pre-arrest bail granted to him is hereby re-called. The bail application is dismissed.

Needless to state that the observations above are tentative, and that nothing herein shall be construed to prejudice the case of either side at trial.

SHABAN\*

**JUDGE**