

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Cr. Bail No. 1235 of 2024**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing of bail application.

**Date of hearing and Order on 08.07.2023**

Mr. Moula Bux Bhutto advocate for the applicants  
Mr. Siraj Chandio, Additional PG along with complainant Munnawar Khan  
and victim Manzoor & Muhammad Shamim Investigating Officer, of PS  
Rizvia

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**ORDER**

**Adnan-ul Karim Memon, J:-** Through the instant bail application, the applicants Zahoor Ahmed, Hamid Ahmed, and Saqib have approached this Court for post-arrest bail in FIR No. 246/2024 registered for offenses under Section 324/109/34 PPC of P.S Rizvia Society Karachi.

2. The accusation against the applicants as per FIR No. 246/2024 is that there was a free fight amongst the rival gangs and due to the firing the applicant Zahoor Ahmed as well as victim Manzoor brother of the complainant sustained gunshot injuries, during such a scuffle. However, during the investigation and after obtaining a Medical Certificate from the MLO, Section 337-F(III) 337 F(IV) PPC was added to the charge sheet.

3. learned counsel for the applicant has submitted that the applicant Zahoor Ahmed and his two sons had been booked in a case of firing that took place amongst two rival groups and the applicants became the victim of such firing in which the brother of the complainant, as well as applicant Zahoor Ahmed, sustained gunshot injury; that nothing has been recovered from the possession of the applicants; that no specific role has been assigned to any of the applicants; that this is the counter version case against the accused Bashir and his sons; that the applicant Zahoor Ahmed is injured and his son applicant Saqib is juvenile under 18 years of age, thus entitled to post-arrest bail; that they are behind the bar since their arrest on 11.04.2024. He further submitted that injuries attributed to the applicant Zahoor were on the vital part of the body and he did not repeat the fire shot as portrayed by the complainant, thus entitled to the post-arrest bail. He further submitted that the counter cases were registered among the rival groups and it is yet to be decided as to which of the parties was the aggressor, however, the FIR had not shown the accused were armed with many weapons or they had caused injuries to the injured, the applicants in the circumstances, could not be held guilty of the offense covered by prohibitory clause of Section 497(10) Cr.P.C.; that mere heinous of crime would not disentitle the applicant from

concession of post-arrest bail; that the object of the criminal trial is to make the accused faced trial and not punish an under trial prisoner. So far as the pendency of other criminal cases is concerned he argued that mere pendency of criminal cases did not ipso facto disentitle the applicant for the grant of bail if otherwise he was/is entitled to bail. In support of his contention, he relied upon the cases of *Jamal-ud-Din alias Zubair Khan v The State* **2012 SCMR 573** *Muhammad Saeed Mehdi* **2002 SCMR 282**, and *Muhammad Razan v The State* **2012 SCMR 2046**. He prayed for allowing the bail application.

4. Learned Additional PG assisted by the complainant who is present in Court has opposed the bail application of the applicant on the ground that the applicants belong to a Narcotics gang and as such indiscriminate firing was being made between two rival groups of narcotics dealers; that FIR was lodged within time and CRO of the applicants is available on record, which shows them to be involved in various cases in similar nature previously; that the applicants are habitual offenders dealing with the narcotics; that sufficient material is available against the applicants. He lastly prayed for the dismissal of the bail application.

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

6. Adverting to the question of applicability of 337 F (III), PPC is concerned, according to Section 337, PPC, six genres of “Shajjah” (injuries) have been depicted such as: (a) Shajjah-i-Khafifah; (b) Shajjah-i-mudihah; (c) Shajjah-i-hashimah; (d) Shajjah-i-munaqillah); (e) Shajjah-i-ammah; and (f) Shajjah-i-damihah, Shajjah-i-Mutalahimah, which is punishable with imprisonment of either description for a term which may extend to three years.

7. The Supreme Court in similar circumstances has dealt with the issue involved in the present case. However, in the present case, the applicants have been charged with Section 337-F(III) i.e. Ghayrjaifah mutalimah. The punishment of Section 337-F(III) is daman and may also be punished with imprisonment of either description for a term that may extend to three years as ta’zir. So far as Section 337-F(V) Ghayrjaifah Hashmiya is daman and may also be punished with imprisonment of either description for a term that may extend to five years.

8. As far as section 324 PPC is concerned, in an attempt to murder case falling within the ambit of section 324, P.P.C., the nature of the act done, the intention of the offender and the circumstances leading to the occurrence are the essential ingredients, which need to be probed into determine the guilt or otherwise of an accused.

9. According to the Medico-Legal Report of the injured PW, the injuries on his right Thigh have been declared as Jurh Ghayr-jaifah Mutalihma falling within

the ambit of Section 337-F(III) 337-F (IV) PPC for which the punishment of Section 337-F(iii) is arsh which shall be punished with imprisonment of either description for a term that may extend to three and five years. However, at the same time applicants, Zahoor Ahmed and Hamid Ahmed also received bullet injuries on the right ankle and foot, and is yet to be ascertained by the trial Court, who caused the injuries to whom. However, I do not want to comment on this aspect of the matter, lest it may prejudice the case of either of the parties before the Trial Court if proceeded on merit. It is the Trial Court, who after recording of evidence would decide about the guilt or otherwise of the applicants and as to whether Sections 337-F(III) (V) and, 324 PPC are applicable or not.

10. It is well settled by now that it is not possible in each case to prove the malafide but the same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post-arrest bail then merely at the wish of the complainant, he/she cannot be sent behind bars for a few days by dismissing his/her application for bail. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Khalil Ahmed Soomro vs. The State **PLD 2017 SC 730**.

11. In view of the above tentative assessment, these all factums make the case of the applicants to be one wherein the exercise of discretion of post-arrest bail would be just to meet the ends of justice, particularly, when the circumstances warrant further inquiry on the aforesaid aspect of the case, as the FIR prima facie suggests that there was free fight between two rival groups, in such circumstances grant of bail is a rule and refusal is an exception. Reliance is placed on the cases of Muhammad Ramzan alias Jani Vs. The State and others **(2020 SCMR 717)**.

12. The essence of the above discussion is that the applicants have succeeded in making the case for the post-arrest bail, hence, this bail application is allowed and subject to their furnishing of surety bonds in the sum of Rs.200,000/- (Rupees two hundred thousand only) each with P.R bond in the like amount each to the satisfaction of the trial court.

11. Needless to mention any observations made in the above order are tentative and shall not influence the trial court in any manner.

JUDGE