

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.764 of 2024

Date

Order with signature of Judge

For hearing of bail application

Date of hearing and Order:-08.7.2024

Mr. Javed Rajput advocate for the applicant alongwith applicant Subash
Mr. Siraj Ali Khan, Additional PG

Mr. Liaquat Ali Khan advocate for the complainant alongwith
complainant Rocky

ORDER

Adnan-ul-Karim Memon, J :- Applicant Subash has approached this court for bail before arrest under Section 498 Cr. P.C in Crime No.82 of 2024, for offenses under sections 324,147,148,504 PPC of Police Station Saddar Karachi. The bail plea of the applicant has been dismissed by the trial court vide order dated 20.3.2024 on the ground that the applicant was nominated in the crime with the specific role of causing injuries to the brother of the complainant on the vital part of his body, so far as rule of consistency is concerned, learned trial Court has opined that the case of the applicant is distinguishable than the co-accused whose bail was confirmed.

2. The accusation against the applicant is that on 24.2.2024, he along with his accomplices assaulted the brother of the complainant namely Babu with a sharp-edged article due to which he received fatal injuries on his chest, such report of the incident was given to Saddar Police Station on 24.3.2024 who registered the F.I.R against the applicant and others.

3. The learned counsel for the applicant has submitted that the applicant is innocent as the complainant intended to pressure the applicant to bow before his illegal demands; and that the alleged offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C; that the MLO has erroneously opined the injury as 4 cm x 3 cm left side of chest; that the Investigating Officer erroneously added the Section 337-D PPC in the charge-sheet. He further added that the doctor had wrongly opined the injury as Jurrh Jaifa. About the CDR report, learned counsel submits that the same has no evidentiary value; that the applicant has joined the investigation and is no more required for further investigation; and that no fruitful result will come out if the applicant is sent to jail. He lastly prayed for allowing the instant bail application.

4. The learned counsel for the complainant has opposed the bail plea of the applicant and submitted that the applicant/accused is not able to demonstrate any malafides in lodging the FIR nor is his arrest being sought with ulterior motives, which remains the primary test for the grant of pre-arrest bail. Learned Assistant PG submitted that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations, to protect the innocent person 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 pre-arrest bail. He next argued that the applicant has been specifically nominated in the subject crime with a specific role of causing a blow with a sharp-edged weapon at the complainant and causing injuries to PWs. Per learned counsel, the version of the complainant party is supported by the statements of the injured witnesses and other witnesses recorded under Section 161, Cr.P.C. as well as by the medical evidence and recoveries of the alleged weapon of offense are yet to be effected as such no extraordinary circumstances are available to thwart the investigation process. On the point of the defense version, as pleaded by the accused, is concerned, he submitted that this Court is not to make a probe into the defense version to advance a plea of bail, rather it has to assess tentatively the material produced before it and to see if reasonable ground exists to believe, prima facie involvement of accused in the commission of the offense and if the accused found connected with the commission of the offense, he will not be released on bail based on further inquiry. Learned counsel emphasized that the offense under section 324, P.P.C. is prima facie attracted to the present case; hence, the alleged offense falls within the prohibitory clause of section 497 Cr.P.C. As such, prima facie sufficient material is available with the prosecution to connect the accused with the commission of the alleged offense; and the grounds of malice and ulterior motive are hardly available to the accused, therefore, they do not deserve any leniency from this Court. He prayed for the dismissal of the bail application.

5. Learned Assistant P.G. has adopted the arguments of the learned counsel for the complainant and submitted that the learned trial Court has rightly dismissed the bail plea of the applicant. It has been contended that it is a settled principle of law that in such cases the statement of the injured victim itself is sufficient for proving the charge against the accused. Therefore, he does not deserve any leniency from this Court.

6. I have heard the learned Counsel for the Applicants, learned A.P.G for the state as well as learned Counsel representing the Complainant, and perused the material available on record and case law cited at the Bar.

7. It is now well settled that while granting extraordinary relief of prearrest bail, the merits of the case can be touched upon in terms of the ratio of the judgment of the Supreme Court in the cases of *Javed Iqbal Vs. The State* 2022 SCMR 1424 and *Miran Bux v. The State* (PLD 1989 SC 347). However, the law of bail under Section 497 Cr. P.C, wherein it is provided that a person shall not be released on bail if there appear to be reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years, though all the offenses do not fall within the prohibition contained in Section 497 Cr. P.C, however in pre-arrest bail this Court is only required to see the ulterior motives and malafide of the complainant and police and will also tentatively assess the material and can also touch the merits of the case so far as the allegations contained in the F.I.R, nature of injuries, medical evidence if available and statement of PWs and other material points available on the police file. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offense and if the answer is in the affirmative he/she is not entitled to grant even post and/or pre-arrest bail.

8. However, I am also well aware of the fact that the grant of pre-arrest Bail is an extraordinary relief that is extended in exceptional circumstances when glaring malafide is shown on the part of the prosecution to cause unjustified harassment and humiliation of a person in case of his arrest. However, in the present case, the allegation against the applicant is that he along with their accomplices launched a murderous assault upon the complainant party by injuring the brother of the complaint with a sharp-edged weapon. The aforesaid incident was witnessed by the PWs. Prima facie the alleged occurrence has taken place whereas the parties were known to each other before the alleged incident and this could be the reason the applicant is named in the F.I.R.; hence, there is no question of the identity of the applicant by the prosecution witnesses.

9. 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 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 also needed to be proved for conviction under the section.**
- iv) **The act by the offender would cause death in its ordinary course.**

10 In the instant case, there is admittedly injury sustained by the brother of the complainant on his vital part i.e chest as opined by the Medico legal officer, and falls within the ambit of section 337-D, punishable with imprisonment of either description for term which may extend 10 years as tazir, such fatal injury is the basis to attract the main ingredient of section 324, P.P.C. as the victim was assaulted to cause such injury as defined in Section 337-E PPC, punishable under Section 337-D PPC; and 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 bail can be extended to an accused if the reasonable grounds to connect him with the commission of a crime are found lacking from the record, in the case in hand prima-facie the ingredients of section 324 PPC, are attracting in this case. Moreover, it has been explained that the applicant caused fatal injury to the victim, and the crime weapon is yet to be secured. Moreover, the injury assigned to the applicant finds support from a medical certificate. The version of the complainant also gets support from 161 Cr. P.C. statements of prosecution witnesses.

11. Tentatively, all these factors connect the applicant with the commission of the alleged offense, disentitling him for the concession of discretionary relief of pre-arrest bail. Accordingly, the instant bail application stands dismissed.

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

JUDGE

Shafi