

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-681 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

29.08.2024

Mr. Aijaz A. Awan advocate for applicant.
Mr. Zulfiqar Ali Korai advocate for complainant.
Ms. Sana Memon, Assistant Prosecutor General.

ZULFIQAR ALI SANGI, J.- Applicant seeks post-arrest bail in Crime No.91/2023 registered at P.S. Balu Ja Quba U/s 302, 114, 147, 148, 149 337-L(ii), 337-A(i), 337-A(iii), 337-F(i) PPC after his bail was declined by the learned 5th Additional Sessions Judge Shaheed Benazirabad vide order dated 31.05.2024.

2. Allegation against the present applicant is that he caused lathi blow to the cousin of complainant Fida Hussain whereas co-accused caused death of the deceased and caused injuries to complainant and PW Ashique Ali.

3. It is contended by counsel for the applicant that the applicant has been falsely implicated in this case; that the complainant by throwing winded net falsely involved whole family members of the applicant party; that there is inordinate delay of almost one day in lodging the FIR and such delays is also unexplained; that co-accused have already been granted bail by the trial Court, hence under the rule of consistency applicant is entitled for the concession of bail; that it is admitted facts that applicant has not caused a single injury to the deceased; that from the very facts of the alleged FIR it is worth to mention here that section 302 PPC does not attract to the case of applicant while remaining all sections areailable except section 337 A(iii) which provides punishment upto ten years therefore the same does not come within the ambit of prohibitory clause of section 497 Cr.P.C; that malafide on the part of complainant can be judged from the facts that alleged place of incident is very much thickly populated place but the complainant did not associate a single independent witness to be the witness of alleged offence, as such, all the witnesses are kith and kin of complainant and are interested; that case against the applicant is one of further enquiry; that case has been challaned and applicant is in jail since his arrest without any progress in the trial. He lastly, prayed for grant of bail.

4. The bail plea has been opposed by learned APG and counsel for complainant by submitting that the injury received by injured Fida Hussain has been decaled by the Doctor as 337-A(iii) PPC which provides punishment up to 10

years and the same falls within prohibitory clause of section 497 Cr.P.C, therefore, applicant is not entitled for grant of bail.

5. Heard learned counsel for the applicant, complainant and APG and perused the material available on record.

6. It reflects from the record that the trial court has granted bail to co-accused Waqar, Rasheed Ahmed and Rafique Ahmed, who had caused lathi injuries to the complainant and PWs, while observing that the punishment of said injuries does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. and plea of bail of present applicant was declined only on the ground that his case falls within the ambit of prohibitory clause of section 497 Cr.P.C. Perusal of section 337-A(iii) PPC, it reflects that the offence shall be liable to arsh which shall be ten percent of the diyat and may also be punished with imprisonment of either description for a terms which may extend to ten years as ta'zir. The word may is used twice in the aforesaid section and the same discretion is to be exercised by the trial court after recording evidence and to decide quantum of the sentence. It is settled law that for deciding the bail plea lesser sentence is to be considered which in the present case for section 337 A(iii) starts from 0 to 10 which does not fall within the prohibitory clause of section 497 Cr.P.C. Looking to the above scenario the case of applicant is at par with that of co-accused who have been granted bail by the trial court. Further sharing of the common intention with the co-accused (who are not before this court) for committing murder of the deceased will also be decided by the trial court after recoding evidence. Furthermore from the perusal of record it reveals that as per mashirnama of inspection of injuries of injured Fida Hussain, he received only two injuries whereas, the Doctor in the medical certificate has certified six injuries at the person of PW Fida Hussain for which prosecution has no explanation as to wherefrom these injures received by the injured.

7. It is settled law that bail plea is to be decided tentatively and from tentative assessment of the material available on record, and in view of the above discussion the case of applicant falls within the ambit of further inquiry entitling him for grant of bail. Therefore, the bail application is allowed and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- and PR bond in the like amount to the satisfaction of Trial Court.

8. The observations made hereinabove are tentative in nature only for the purpose of deciding the instant bail application, which shall not, in any manner, influence the learned Trial Court at the time of final decision of the subject case.

JUDGE