

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Application No.S-242 of 2023

Applicant: Muhammad Saleem, through
Mr. Muhammad Nasir Malik, Advocate

Complainant: Deedar Ali, through Mr. Muhammad Ali
Napar, Advocate

Respondent: The State, through Mr. Khalil Ahmed
Maitlo, Deputy Prosecutor General

Date of hearing: **09.10-2023**
Date of Decision: **09.10-2023**

ORDER

Arbab Ali Hakro, J:- Through this bail application u/s 497 Cr.P.C., applicant Muhammad Saleem Katpar, seeks admission to post-arrest bail in Crime No.24/2023, registered at Police Station Kandhra, u/s 324, 337-A(i), 337-F(i), 147, 148, 149, 504 and 114 PPC. His earlier bail plea was declined by the learned Additional Sessions Judge-II/Gender Based Violence Court, Sukkur, vide orders dated 28.03.2023. After that, the applicant approached this Court.

2. Briefly, the facts of the prosecution case are that on 07.03.2023, complainant Deedar Ali Katpar lodged an F.I.R. stating therein that accused Hafeezullah's daughter, Mst. Sumera is his daughter-in-law, who, annoyed, went to her father. On 02.03.2023, the complainant, his brother Gullan and his son Salahuddin went to the house of Hafeezullah for reconciliation where accused Saleem (present applicant) Hafeez, Muhammad Ayoub (in F.I.R. Babar), all sons of Arz Muhammad Katpar and three unidentified persons were present. They asked Hafeezullah for the return of his daughter-in-law Mst. Sumaira but accused Hafeez abusing them, refused to return her and

also instigated the co-accused to commit their murder. On his instigation accused, Saleem took a wooden piece of cot lying in the house and inflicted blow to Salahuddin, which hit him on his head, while others caused fists and kicks. On their cries, villagers attracted, seeing them, the accused persons went away. Thereafter, they brought the injured to the Police Station, obtaining a letter for treatment, and came to R.H.C. Kandhra, where he was referred to GIMS Hospital Gambat. Thereafter, the complainant went to the Police Station and registered such F.I.R.

3. Learned counsel for the applicant has contended that there is delay of five days in registration of F.I.R., which has not been properly explained by the complainant; that the applicant has falsely been implicated due to enmity which is admitted in the F.I.R.; that the medical evidence is contradictory to the ocular version; that all the P.W.s are closed relatives of the complainant, and they are highly interested; that nothing has been recovered from the applicant Muhammad Saleem during investigation; that section 324 PPC has been misapplied as the ingredients of the same are missing and its applicability could be determined at the trial; that applicant is behind bars for last more than seven months; that the case has been challaned and fixed for evidence as such applicant is no more required for further investigation. Lastly, he prayed for post-arrest bail to the applicant. In support of his contentions, learned counsel placed his reliance on the case of **Imran Azher v. the State (2017 Y.L.R. Note116)**, **Zaheer Ahmad Khan v. The State (2003 SCMR 919)**, **Dilawar v. The State and another (2018 P.Cr.L.J 988)**, **Muhammad Irfan Shahzad v. The State and another (2018 P.Cr.L.J No.152)**, **Haq Nawaz v. the State and another (2018 Y.L.R. Note 86)**, **Fareed Bakhsh v. the State and another (2018 P.Cr.L.J Note1)**, **Farzand Ali v. Taj and 2 others (2000 SCMR 1854)**, **Ali Muhammad v. the State (2011 YLR 1091)**, **Ali Gohar alias Igloo v. the State (2012 YLR 873)**,

Muhammad Tanveer v. the State and another (PLD 2017 Supreme Court 733).

4. Learned counsel for the complainant has opposed the grant of bail to applicant, contending that he is assigned the specific role to inflict blow a wooden piece of cot to the injured Salahuddin; that the complainant and P.W.s have fully supported the prosecution case; that complainant has fully explained the delay in F.I.R.; that the medical evidence is in corroboration with the ocular version; that no malafide has been pointed out by the applicant on the part of complainant; that the offence u/s 337-A(iii) P.P.C. carries capital punishment of 10 years. Lastly, he submitted that the applicant is not entitled for concession of post-arrest bail. He placed his reliance on the case of **Munir Hussain v. The State (2022 P.Cr.L.J Note 111)**.

5. Learned D.P.G. adopted the arguments advanced by the learned counsel for the complainant and has opposed the bail application and further contended that in reinvestigation, the I.O. has fully involved the applicant Muhammad Saleem in the commission of offence.

6. I have considered the arguments advanced by learned counsel for the respective parties and have gone through the material available on the record with their assistance.

7. Admittedly, the applicant is nominated in the F.I.R. with a specific role to inflict blow a wooden piece of cot to injured Salahuddin; the version of the complainant has been fully supported by the P.W.s in their 161 Cr. P.C. statements; the medical evidence supports the ocular version; the complainant in the F.I.R. has properly explained the delay in registration of F.I.R.; no malafide has been pointed out by the applicant on the part of the complainant for false implication rather the enmity proves motive of the incident; the injury attributed to the applicant Saleem falls under section 337-A(iii) P.P.C. which carries capital punishment of 10 years and falls within the prohibitory clause of section 497 Cr. P.C.; that the case law cited

by learned counsel for the applicant is distinguishable to the case of applicant and is not applicable in this case, while the case law referred by learned counsel for the complainant is fully applicable to the case in hand. It is a settled principle of law that the Court has to make a tentative assessment while deciding the bail application, and a deeper appreciation of evidence is not permissible at the bail stage.

8. In these circumstances, I am of the considered view that there is sufficient material available with the prosecution which connects applicant Muhammad Saleem with the commission of offence. Therefore, applicant Muhammad Saleem has failed to make out his case for grant of post-arrest bail. Accordingly, his bail application stands dismissed.

9. 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 the final decision of the subject case.

JUDGE