

IN THE HIGH COURT OF SINDH, CIRCUIT BENCH HYDERABAD

Criminal Bail Application No. S-938 of 2024

Applicant : Ghulam Murtaza s/o Fazal ul Haq Jalbani,
through Mr. Wajid Ali Khaskheli, Advocate

Respondent : The State, through Ms. Sana Memon,
Assistant Prosecutor General, Sindh

Complainant : Wazeer Ali s/o. Ali Sher Jalbani, through
Mr. Abdul Rasool Abbasi, Advocate

Date of hearing : 23.09.2024

Date of order : 23.09.2024

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Criminal Bail Application, applicant Ghulam Murtaza seeks pre-arrest bail in Crime No.60 of 2024, registered under section 324, 337-F(i), 337-F(iii), 337-F(vi), 34, P.P.C. at P.S. Sehwan. His earlier application for the same relief bearing Cr.B.A.No.74 of 2024 was heard and dismissed by the learned Additional Sessions Judge-II, Jamshoro at Kotri vide order dated 09.08.2024. He was admitted to interim pre-arrest bail by this Court vide order dated 26.08.2024, now the matter is fixed for confirmation of the same or otherwise.

2. It is alleged that, on 13.05.2024, at about 01:00 p.m., the complainant along with his daughter-in-law Mst. Seema and his sister Mst. Afsana Jalbani went to village Gulab Jalbani for condolence of their relative and on their returning they reached Bobak Sabeel, Railway Station Link Road, where their motorcycle became punctured. Meanwhile, the applicant along with co-accused Razzaq s/o Manthar, both armed with repeaters, and Badal s/o Gahi Khan, armed with pistol, came and in furtherance of their common intention, the applicant attempted to commit *qatl-e-amd* of Mst. Seema w/o Abdul Qadir (*the daughter-in-law of complainant*) by causing her direct firearm injuries with

repeater; co-accused Razzaq made direct fire on Mst. Afsana (*the sister of complainant*) with his repeater. Then applicant again made straight fire from his repeater on Mst. Seema while co-accused Badal made fire with his pistol on the complainant which went missed. The accused persons then fled away and the injured were taken to Sehwan Hospital.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in the case by the complainant with mala fide intention and ulterior motives; that the alleged injury is on non-vital parts of the body of the injured Mst. Seema; that in the F.I.R. the complainant has attributed two repeater fires to applicant, while the said injured in her statement recorded under section 161, Cr. P.C. has attributed one to applicant and the other to co-accused Razzaq, which creates doubt in prosecution case rendering the case one of further inquiry; that there is no independent witness of the alleged incident; that the alleged injuries are punishable in maximum with imprisonment of three years for the offence under section 337-F(iii), P.P.C., which does not fall within the prohibitory clause of section 497, Cr. P.C., and so far application of section 324, P.P.C. is concerned, its applicability would be seen by the trial Court after recording pro and contra evidence of the parties; hence, the applicant is entitled to the concession of bail. In support of his contentions, learned counsel has relied on the case of *Zaigham Ashraf vs. The State and others* (2016 SCMR 18), *Haji Maa Din and another vs. The State and another* (1998 SCMR 1528), *Syed Amanullah Shah vs. The State and another* (PLD 1996 SC 241) and *Ghulam Muhammad alias Masood vs. The State* (2020 YLR Note 56)

4. On the other hand, learned counsel for the complainant and Assist. P.G. have opposed the instant application on the ground that the applicant

has caused firearm injuries to injured witness Mst Seema on her vital part, which fact is duly corroborated by the MLC; hence, he is not entitled to the extra ordinary relief of pre-arrest bail.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is matter of record that the applicant is nominated by name in the promptly recorded F.I.R. with specific role of causing firearm injuries to Mst. Seema who, as per MLC, has received 10 pellets injuries on her left side of chin, left ear region, upper arm, upper arm below, lateral and upper sides of left breast, medial side of right breast and centre chest, which have been declared by the MLO as *Shajjah-i-khafifah* and *Ghayr-jaiyah mutalahimah* punishable under Section 337-A(i) and 337-F(iii), P.P.C., respectively. The breast and chest are vital parts of human body and any such injuries, if inflicted to any woman, it may cause disfigurement of her such parts of the body especially breast, which represent fertility, femininity and vitality. The injured, Mst. Seema, has sustained said injuries on her sensitive parts of her body on account of direct fire made on her by the applicant with her repeater gun. Evidence on record indicates that an attempt was made by the applicant on the life of said injured. Hence, offence under section 324, P.P.C. is *prima facie* attracted to the present case, which being punishable with imprisonment for ten years, 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 applicant with the commission of alleged offence.

7. Moreover, the learned counsel for applicant has not been able to point out any special feature of the case entitling the applicant to grant of extra

ordinary concession of pre-arrest bail. It is now settled principal of law that in order to justify the grant of anticipatory bail, the accused is required to show that he apprehends his arrest on account of ulterior motives. One of the main considerations for grant of bail is whether the prosecution is motivated by malice so as to cause irreparable injury to citizen's reputation and liberty. The accused approaching the Court of law for grant of anticipatory bail is required to show that he is falsely implicated for extraneous consideration and ulterior motives are behind his arrest. Learned counsel for the applicant has remained unable to persuade me to hold that accused had no concern with the alleged offence. Hence, in the instant case the pre-requisites for such concession i.e. malice and ulterior motives either on the part of complainant or the police are conspicuously missing.

8. As regards the contentions of the learned counsel for the applicant, suffice to say that the Court under sub-section (2) of the Section 497, Cr. P.C. 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 offence and if the accused found connected with the commission of offence, he will not be released on bail on the basis of further inquiry. Reliance in this regard may be placed in the case of Khalida Bibi v. Nadeem Baig (PLD 2009 S.C. 440). The question whether the injured Mst. Seema sustained alleged injuries due to double fires of applicant or one of applicant and the other of co-accused Razzaq, it would be seen at the trial by the trial Court. The case-law cited by the learned counsel for the applicant being on different footings does not advance the case of applicant for the grant of pre-arrest bail. Hence, this bail application is dismissed. Interim order, dated 26.08.2024, stands recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case on merits.

JUDGE

Tufail