

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-206 of 2023
(*Najeebullah Kalwar Vs. The State*)

Date	Order with signature of Judge
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1. *For Orders on office objection.*
2. *For hearing of bail application*

Mr. Jamshed Ahmed Faiz, advocate for the applicant.

M/s Ubedullah K Ghoto, Ajeebullah Junejo and Irshad Nawaz Kalwar advocates for the complainant.

Syed Sardar Ali Shah Rizvi, Additional P.G for State

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ORDER
22-09-2023

KHADIM HUSSAIN SOOMRO, J. Through the instant Application, applicant Najeebullah Kalwar sought post-arrest bail in Crime No. 31 of 2023; offence u/s 324, 337H(ii), 147, 148, 149 PPC registered at Police Station Adilpur. Prior to this, the applicant has filed a like nature application, which was dismissed by the Court of IIIrd Additional Sessions Judge Ghotki vide order dated 28-03-2023, which is impugned by the applicant by filing the instant application.

2. The facts of the prosecution case are that complainant Irfan Ali Kalwar lodged the FIR on 03-03-2023 alleging therein that on the said date at about 09:00 am, he along with his witnesses

was going to his land and when they reached there, he saw accused Zulfiquar Ali, Najeebullah armed with guns, Usama, Kamran Ali armed with pistols and two unidentified persons armed with lathies. These individuals collectively encircled the complainant. Accused Zulfiquar aimed his gun upon complainant party, and inquiring as to their presence on the designated property despite prior admonitions, and after that all the accused pointed their weapons upon the complainant party. Accused Zulfiquar and Najeebullah made straight fires upon Shahnawaz, the uncle of the complainant, with the intention to commit his murder, which hit him in his right and left leg; while crying, fell down, the remaining accused persons also made aerial firing in order to create harassment. The villager came at the spot, upon their arrival, the accused persons escaped away. The complainant brought the injured at Police Station, obtained the letter for treatment, then brought him at Taluka Hospital, ultimately lodged the above said FIR.

3. The counsel representing the applicant argues that the applicant/ accused is innocent and has falsely been implicated in this case by the complainant as a result of a dispute over a piece of land, and there is a civil suit, being F.C Suit No 50/2021, which involves a claim for possession through pre-emption and a permanent injunction. This suit is currently

pending in the court of law, between the parties involved; that prior to registration of this FIR, the complainant party has also lodged series of FIRs against the present applicant/accused and others such as Crime No. 12/2017, 25/2017, 08/2021, 76/2021, 141/2022, 212/2023, 31/2023 at Police Station Adilpur; that ingredients of section 324 PPC are lacking in this case, as the applicant/accused has not repeated the fire, which shows that he has no intention to commit the murder of injured; that medical certificate issued by the medical officer is fictitious, therefore the applicant moved an application to the medical board, which subsequently issued multiple notices to the injured, however, he intentionally and deliberately did not appear before the medical board; that the injuries as allegedly sustained by the injured has been declared as Ghyr-e-Jaifah Mutalahima u/s 337F(iii), which carries the punishment of three years; that the injuries sustained by the injured at left and right thigh, which are non-vital parts of the human body, hence case against the applicant/accused requires further enquiry and he is entitled to concession of bail.

4. On the other hand, learned counsel for the complainant vehemently opposed the grant of bail to the applicant/accused on the ground that he was man who caused firearm injury to the injured Shahnawaz with the intention to commit his

murder; that once trigger is pressed, it constitutes an offence under section 324 PPC, and it makes no difference, either the injured sustained injury at vital or non-vital part of the body; that delay in lodging the FIR is fully explained by the complainant, as the injured first brought at police station for obtaining a letter for treatment, after that he was referred to Taluka Hospital; that plain reading of the FIR shows that there dispute between the parties over landed property, which steamed the present incident; that ocular account is supported by the medical evidence; that eleven empties were recovered from the place of incident out of which 06 empties of 12 bore and 05 empties of 30 bore, the counsel finally argued that the applicant is not entitled to concession of bail. In support of his contention, he placed his reliance on cases reported as 2021 SCMR 1983(*Haji Shah Behram Vs. The State and others*), 2021 SCMR 1225 (*Noor Islam Vs. The State through P.G and another*), 2023 SCMR 975 (*Ahtisham Ali Vs. The State*), 2020 SCMR 937 (*Bilal Khan Vs. The State P.G, Punjab and another*) and 2020 SCMR 1486 (*Sheqab Muhammad Vs. The State and others*).

5. Learned Additional P.G conceded the arguments of learned counsel for the applicant/accused on the ground that it has been alleged in the FIR that applicant/accused Najeebullah Kalwar and co-accused Zulfiqar Ali, made fire upon injured

Shahnawaz which hit him at his left and right thigh which is a non-vital part of the human body and the offence as alleged does not fall within the prohibitory clause of section 497 (2).

6. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

7. It is evident from the contents of FIR that a joint role is assigned to applicant/accused Najeebullah and co-accused Zulfiqar Ali, and it is yet to be ascertained whether the injured sustained injury either at the hands of present applicant/accused Najeebullah or co-accused Zulfiqar Ali. As per the memo of the place of occurrence, a total of eleven empty cartridges were found at the scene of the incident, out of which six empty cartridges of 12 bore and five empty cartridges of 30, which shows that the applicant had ample opportunity to kill the injured, but he did not repeat the fire, which prima-facie shows that the applicant had no intention to kill the injured within the ambit of Section 324 PPC; however, the intention of the applicant accused to kill the injured can only be determined after recording evidence by the trial Court. The medical certificate shows that injury sustained by the injured has been declared as Ghyr-e-Jaifah Mutalahimah 337F(iii), which provides a punishment of three years and does not fall within

the prohibitory clause of section 497 Cr.P.C. In this context reliance can be placed in the case of *SAEED ULLAH and 2 others V/S The State, 2023 S C M R 1397. Further reliance can also be placed upon the case of Muhammad Tanveer V. State (PLD 2017 SC 733). Muhammad Umar v. the State and another (P L D 2004 Supreme Court 477); Muhammad Mumtaz v. The State (2004 P.Cr.L.J 1875), Saeed and another v. The State (2008 P.Cr.L.J 1139);*

8. The record reflects that applicant accused was arrested on 05-03-2023, and since then he is in custody. The final 173 report has been submitted, and trial has yet to be commenced. There would be no productive purpose in keeping the accused applicant behind bars.

9. In view of above, the case of the applicant/accused fell within the ambit of section 497(2) Cr.P.C; therefore, he is granted bail subject to furnishing solvent surety in the sum of Rs. 100,000/- (One lac) and P.R bond in the like amount to the satisfaction of learned trial Court. If the applicant/accused misuses the concession of bail, then the trial Court is at liberty to cancel his bail and may take action against him in accordance with the law.

10. The facts and circumstances of the case law relied upon by learned counsel for the applicant/accused are quite helpful while deciding the instant bail application, while the facts and circumstances of the case law relied upon by learned counsel for the complainant are quite distinguishable from the case in hand.

11. The observation made hereinabove is tentative shall not prejudice the case of either party.

J U D G E

Nasim/P.A