

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1558 of 2024

Date: Order with signature(s) of the Judge(s)

For hearing of bail application.

20.02.2025

Mr. Hashmat Khalid, advocate for Applicants/accused.
Mr. Naeem Mehmood, advocate for the Complainant
Mr. Muhammad Raza, Additional Prosecutor General, Sindh a/w
P.I. Bilal Ahmed PS Taimuria.

Jan Ali Junejo, J: The present Criminal Bail Application has been filed on behalf of the Applicants/Accused, who are seeking pre-arrest bail in connection with a case stemming from FIR No. 184 of 2024, registered at P.S. Haidry Market, Karachi, under Sections 324/34 of the Pakistan Penal Code (P.P.C.). The Applicants/Accused initially approached the learned Sessions Court by filing Bail Application No. 1060 of 2024, which was dismissed by the Court of the learned IInd Additional Sessions Judge, Karachi-Central, vide Order dated 10-07-2024.

2. The facts relevant to the present criminal bail application are as follows:

The complainant, Syed Mirza Ismail Baig, owner of a beef and mutton Shop in North Nazimabad, reported that on May 9, 2024, at around 5:30 PM, three individuals arrived on two motorcycles and opened fire, injuring him in the right leg and grazing the left knee of sweeper, Ajmal John. The assailants fled, and the complainant was treated at multiple hospitals, with the bullet surgically removed and retained as evidence. He identified the attackers as Irfan Khan, Raziq Khan, and Noman Khan, sons of Naseer Khan Bangash, who had previously harassed him and were allegedly linked to a prior conflict involving his brother and a fatal altercation over extortion demands in July 2023. The complainant believes the attack was retaliation for the ongoing case (FIR No. 196/2023) related to the earlier incident.

3. The learned counsel for the Applicants/accused argued that the current FIR is a counterblast to FIR No. 196 of 2023, registered under Section 302, P.P.C., against the Complainant party. It is further contended

that the present case is a result of malafide intent and vendetta, aimed at harassing the Applicants/accused rather than seeking genuine justice. The timing and circumstances of the FIR suggest it was filed as a retaliatory measure. The counsel emphasized that the alleged bullet injury sustained by the Complainant was not on any vital part of the body, which indicates that the offense does not meet the necessary ingredients of Section 324, P.P.C. (voluntarily causing hurt by dangerous weapons or means). He further argued that the injury was minor and not life-threatening, thereby reducing the gravity of the alleged offense. The counsel contended that the case is based on weak evidence and requires further inquiry. The learned counsel highlighted that the allegations are vague, and no prima facie case is made out against the Applicants/accused. The lack of concrete evidence and the presence of ulterior motives on the part of the Complainant warrant a deeper inquiry into the guilt of the Applicants/accused. The counsel concluded by praying for the grant of pre-arrest bail, arguing that the Applicants/accused are law-abiding citizens with no prior criminal record.

4. The learned Additional Prosecutor General and counsel for the Complainant argued that a prima facie case is clearly established against the Applicants/accused. The FIR nominates them specifically, and the allegations, supported by medical evidence, indicate their involvement in the commission of the offense. The nature of the injury, even if not on a vital part of the body, still constitutes an offense under Section 324, P.P.C. They emphasized that the use of firearms in the commission of the crime is a serious matter, and the injury caused to the Complainant, regardless of its location, demonstrates the violent intent of the Applicants/accused. The counsel for the Complainant refuted the argument that the FIR is retaliatory, stating that the two cases (FIR No. 196 of 2023 and the present FIR) are distinct and based on separate incidents. They argued that the Applicants/accused cannot use the existence of another FIR as a shield to evade accountability in the present case. The Additional Prosecutor General stressed the necessity of custodial interrogation to uncover the full extent of the Applicants/accused's involvement in the crime. They argued that pre-arrest bail at this stage would hinder the investigation, as the accused may attempt to destroy evidence or intimidate witnesses. The

counsel for the Complainant highlighted that granting pre-arrest bail in such cases would set a dangerous precedent, undermining the rule of law and public confidence in the justice system. They prayed the court to dismiss the bail application in the interest of justice and to ensure a fair and thorough investigation.

5. I have carefully considered the arguments presented by the learned counsel for the applicants/accused, the learned Additional Prosecutor General, and the learned counsel for the complainant. Additionally, I have meticulously examined the material available on record with the utmost care and caution. Upon a careful examination of the record, it appears that the complainant allegedly sustained an injury to a non-vital part of the body. Additionally, the FIR does not specifically identify any of the applicants/accused as the individual responsible for firing the bullet that caused the injury. This lack of clear attribution casts doubt on their direct involvement in the shooting incident. Furthermore, there is no allegation that the applicants/accused continued to fire shots, even though they had ample opportunity to do so. This absence of repeated gunfire may indicate a lack of intent to commit murder. Given these factors, the essential elements required to establish an offense under Section 324 of the Pakistan Penal Code (PPC) appear to be prima facie absent. The FIR itself mentions on-going clash between the parties, particularly referencing FIR No. 196 of 2023 under Section 302 PPC. This suggests that the current incident may be part of a broader conflict, which requires further inquiry. The case falls within the ambit of Section 497(2) of the Criminal Procedure Code (Cr.P.C.), which allows for the grant of bail if further inquiry is needed. Considering the prevailing circumstances, it is deemed appropriate to confirm the ad-interim pre-arrest bail previously granted by this Court to the applicants/accused in view of the legal principle established by the Supreme Court of Pakistan in the case of *Jamaluddin and another v. The State (2023 SCMR 1243)*, wherein the Court held that: *“The complainant and the injured PW received injuries on the non-vital parts of the body and the petitioners did not repeat the fire despite having ample opportunity to do so. In this view of the matter, the question whether section 324, P.P.C. would be applicable in the case or not would be determined by the learned Trial Court after recording of evidence. As far as the question which requires the attention of this*

Court is that petitioner Jamaluddin has been granted ad interim pre-arrest bail by this Court whereas the other petitioner Rabail has filed petition claiming post-arrest bail. As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency”.

6. In a similar case concerning the same nature, **Muhammad Umar v. The State and another (PLD 2004 Supreme Court 477)**, the Apex Court ruled that: *“A perusal whereof indicates that allegedly the petitioner fired upon the outer side of the right leg's middle part of the injured Shahid Iqbal, therefore, prima facie, We are of the opinion that he had no intention to fire upon the vital part of the injured Shahid-Iqbal for the purpose of launching murderous assault”.*

7. For the reasons outlined above, the interim pre-arrest bail granted to the Applicants/Accused vide Order dated 12.07.2024 is hereby confirmed on the same terms and conditions. The observations made herein are solely for the purpose of this Order and shall not prejudice or infringe upon the rights of the parties concerning the merits of the case.

JUDGE