

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Present, Omar Sial, J.

Criminal Bail Application No. 5 - 87 of 2021

Mehboob Mazari

Applicant

Versus

The State

Respondent

Mr. Sajid Hussain Mahesar, Advocate for Applicant.
Mr. Faiz Muhammad Larik, Advocate for Complainant.
Mr. Atbar Ali Bullo, DPG for the State a/w I.O.

ORDER

Omar Sial, J.: Mehboob Mazari has sought post arrest bail in crime no. 127 of 2020 registered under sections 324, 337 F(i), F (iii) and 34 PPC at the Kashmore police station. Earlier, his application seeking bail was dismissed on 11.2.2021 by the learned Additional Sessions Court Kashmore.

2. A brief background of the case is that the aforementioned FIR was lodged on 7.5.2020 by Nawab Khan narrating therein that his daughter-in-law Pervaiz Bibi was abducted by Jorkhanis in the year 2001 and that an FIR bearing no. 111 of 2001 was registered under sections 11 and 16 of the Zina Ordinance. The accused in that case kept threatening him that if he did not withdraw the FIR he would be killed. On 4.5.2020 Nawab Khan along with his sons Deedar and Jani was sitting in his house when they heard noise outside. When they went outside to explore they saw that the applicant along with Shamsuddin, Khushi Muhammad and Pir Bakhsh was standing with guns in their hands. Mehboob, the applicant, as well as Khushi Muhammad and Pir Bakhsh all fired upon Deedar Hussain who fell down in an injured condition. The accused then fled the scene.

3. I have heard the learned counsel for the applicant as well as the complainant and the learned DPG and have also perused the record with their able assistance. My observations and findings are as follows:

- i. The incident is said to have occurred on 4-5-2020 but it was not until 3 days later i.e. 7-5-2020 that the complainant approached the police station with his complaint. There exists nothing on record to show as to why this delay took place as the medical certificate had also ostensibly been issued on 5-5-2020. In the backdrop of a 2 decade old enmity between the parties, prima facie, deliberations and consultations as well as malafide on the part of the complainant in lodging the case cannot be conclusively ruled out at this stage.
- ii. The memo of inspection of injuries prepared by the police on 4-5-2020 prima facie does not reconcile with the medical certificate issued by Dr. Vijay Kumar on 5-5-2020. The inspection of the place of incident did not take place until 13-5-2020 i.e. after 9 days of the incident without any reason being assigned to this delay as well. It also appears from the memo prepared that it was the complainant who had handed over to the police the 5 empties recovered which he claimed had been fired by the accused.

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The injuries, as declared by the doctor, sustained by Deedar, all (except that under section 324 P.P.C.) carry a potential sentence of up to 3 years. The charge of section 324 P.P.C., upon a tentative assessment, requires further inquiry as had the intent to kill Deedar been the motivating factor, there was nothing stopping the accused from doing so. All the accused targeting Deedar while his father and brother stood and watched the sequence in which he was shot also is unnatural and sheds a negative light on the bonafide of the complainant party.

iv. Apart from the complainant and his 2 sons there appears to be no other witness who saw the occurrence or its immediate aftermath. No recovery of any weapon has been effected. Important and material details of the incident are vague and at places non-existent. I have refrained from making further specific observations in this regard lest they unintentionally prejudice the case of either side. Suffice to say that the nexus of the applicant with the offence with which he is charged requires further inquiry.

4. Above are the reasons for my short order dated 31-5-2021.


30/6/21
JUDGE