

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S-286 of 2019

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Date of hearing: 20.06.2019.

Date of Order: 28.06.2019.

Mr. Athar Abbas Solangi, Advocate for Applicant.
Mr. Muhammad Noonari, Deputy Prosecutor General.

~~~~

**Muhammad Faisal Kamal Alam, J.:** Through this application, applicant Dr. Muzafar son of Abdul Rauf Ghanghro has sought for his admission to post-arrest bail in Crime No.35/2019, registered at Police Station Ratodero (*District Larkana*), for offences punishable under Sections 324 and 337-L P.P.C. His similar prayer was declined by learned Additional Sessions Judge-V, Larkana, vide Order dated 16.05.2019.

2. The facts of the case of prosecution are that on 29.04.2019, complainant Abdul Sami Rajput, Member Anti-Quackery Team Larkana Division, Sindh Healthcare Commission lodged F.I.R on behalf of the State, in the following words:

*"It is complaint that, I am Member of Anti Quackery Team, Larkana Division, Sindh Health Care Commission. Today, I alongwith Dr. Farooque Ahmed Shaikh (Focal Person), Dr. Muhammad Ayaz Mustafa (Director Sindh Health Care Commission and other duty staff, Deputy Commissioner Larkana, Assistant Commissioner Ratodero with the help of police department visited Ratodero town for detecting HIV. During visit we reached at the private clinic of Dr. Muzafar son*

*of Abdul Rauf Ghanghro resident of Ratodero where we saw the said doctor using one drip and one syringe to various children who was found guilty at 1530 hours. His test was conducted for HIV, which came positive and private clinic of Dr. Muzafar was sealed on the spot and doctor with the help of police was brought at police station in custody. The aforesaid doctor deliberately was using same syringe repeatedly to the children and kept secret regarding being infected of himself and other patients and played with the life of infants. The said doctor is neither registered under regulations of Sindh Health Care Commissioner nor got his practice license of PM&DC renewed since 10/12 years. As such, the F.I.R is being registered against him on behalf of the State."*

3. Learned counsel for the applicant mainly contended that; the applicant is not a quack but he is a Medical Officer of BPS-17 posted at Rural Health Centre Banguldero; that the applicant is graduate from Sindh Medical College, Karachi and obtained degree of DCH (Diploma in Child Health) from National Institute of Child Health (NICH) Karachi in the year 2005 and got his MCPS from the same Institute in the year 2006 and ultimately qualified Sindh Public Service Commission examination in the year 2007 and was appointed as Medical Officer (BPS-17) in Health Department. Per learned counsel, the instant case is not a case of alleged medical negligence as defined in clause XXII of Section 2 of Sindh Health Care Commission Act, 2014; that the section applied in FIR is not applicable in the instant case as the ingredients of FIR do not show any attempt to commit qatl-i-amd; that the case of the applicant/accused requires further enquiry; that the applicant has been challaned and is not required for further investigation; that the HIV cases have surfaced very rapidly all over Sindh and the applicant cannot be held responsible for any one of those cases; that the applicant being government servant will not

abscond or tamper with the prosecution evidence if he is admitted to bail. In support of his contentions, learned counsel for the applicant has relied upon the following precedents:

- (i) 2004 P.Cr.L.J.96 (*Zafar Iqbal and others v/s. The State and another*)
- (ii) 2000 P.Cr.L.J.203 (*Yousuf Khan v/s. The State*)
- (iii) 2018 YLR 1810 (*Zia-ur-Rehman v/s. The State*)
- (iv) 2013 YLR 248 (*Shaikh Muhammad and another v/s. The State and another*)
- (v) 2017 MLD 1311 (*Imtiaz Ali Khokhar alias Taji Khokhar v/s. The State and another*)
- (vi) 2000 S.C.M.R 107 (*Mian Manzoor Ahmad Watto v/s. The State*)
- (vii) 2017 P.Cr.L.J 269 (*Sikandar Ali Qureshi v/s. Chairman, National Accountability Bureau and 2 others*)
- (viii) 2014 S.C.M.R 1502 (*Faqir Hussain alias Bali v/s. The State and others*).
- (ix) PLD 2017 S.C 733 (*Muhammad Tanveer v/s. The State and another*).
- (x) 2005 YLR (Lahore) 1968 (*Tariq Mehmood v/s. The State*).

Lastly, learned counsel for the applicant submitted that the present applicant is entitled to the concession of bail.

4. Conversely, learned D.P.G. vehemently opposed the grant of bail in favor of applicant on the grounds that; the applicant is nominated in the F.I.R with specific role; that it is a false allegation that the Anti-Quackery Team / Complainant only targeted the present accused, but it has taken action against other delinquent persons, a list of those is

available in the police file, produced by the learned D.P.G. on the conclusion of the hearing.

5. At this bail stage, only tentative assessment can be made for grant or refusal of bail, *primarily*, on the basis of record available.

6. The Progress Report dated 30.05.2019 submitted by the Police and Report of Joint Investigation Team ("J.I.T.") dated 08.05.2019, are available in the Case Record, have been perused. These Reports are based on the statements of parents of victim children. In the Progress Report (of Police Officials), it is recommended that Section 324 of PPC, as mentioned in the F.I.R, does not apply in the matter. Similarly, J.I.T. in which Doctors were also associated to provide technical support, has concluded that the above named accused / applicant himself is a patient of HIV, it is unlikely that he intentionally spread HIV amongst his patients. The J.I.T gave a negative finding with regard to the allegations that the accused / applicant Dr. Muzafar Ali intentionally infected his patients with HIV. In recommendations, JIT is of the view that case of applicant / accused should be referred to the Pakistan Medical and Dental Council (PMDC) for taking a disciplinary action and the said applicant / accused must be registered with the Sindh Aids Control Programme and his treatment should be commenced soon. It has also come on record that the accused / applicant underwent amputation for gangrene and his right leg was amputated. He (the accused) also appeared before JIT and answered their questions.

7. The final challan has been submitted under section 322 and 337-L PPC. This aspect can also be considered at this bail stage. Since challan has been submitted, therefore, the applicant / accused at present is not required for further investigation. In this regard a reported Judgment handed down in the case of Faqeer Hussain alias Bali v/s. The State and others (2014 SCMR 1502), is relevant, wherein the contents of challan / report at the bail stage were considered and bail was granted.

8. The record shows that the accused himself is a patient of HIV and there is a substance in the arguments of learned counsel for the Applicant / Accused that the latter's case also falls within the first proviso of section 497 of Cr.P.C., relating to a sick or infirm person.

9. The reported decision of Ismail Shaikh (*ibid*) handed down by the Honourable Supreme Court is of significance, wherein, concession of bail was extended to the Petitioner (of the reported case) on medical ground. It was held that when finding of three medical experts with positive recommendation with regard to the illness of Petitioner that he needs medical treatment, was not challenged, then concession of bail was extended to the Petitioner. The first proviso of Section 497 Cr.P.C., as referred in the forgoing paragraphs, has been interpreted in the light of the undisputed medial report. It would be advantageous to reproduce the relevant paragraph of the said reported Judgment herein under\_

*“6. In a non-bailable case punishable with death or imprisonment for life or imprisonment for 10 years, proviso to section 497, Cr.P.C. envisages that the Court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such offence be released on bail. Mr. Naeemur Rehman Standing Counsel for the Federal Government was unable to satisfy us about the sustainability of order of Special Appellate Court rejecting bail in view of positive finding of Medical Board constituted by the Court with the consent of the counsel appearing for the parties particularly when no challenge was made or dispute raised with regard to the authenticity of report of three medical experts.”*

**(underlined to add emphasis)**

It is not a disputed fact as mentioned in the JIT Report, that the present applicant / accused is a patient of HIV; thus his case falls within the ambit of sick person as mentioned in the first proviso of section 497 Cr.P.C. and he is entitled to the concession of bail.

10. Secondly, from the above discussion, it is quite clear that the instant matter is a case of further inquiry, in order to prove the guilt of applicant / accused and to connect him with the commission of the offence, which can only be done after conclusion of trial. Section 322 PPC, mentioned in the challan, does not provide for a sentence but if proven, then Diyat is to be paid, whereas, section 337-L PPC provides a punishment of seven years and thus does not fall within the prohibitory clause of sub-section (2) of section 497 Cr.P.C. The crux of the case law relied upon by the learned counsel for the applicant / accused, which has been mentioned in the forgoing paragraphs is, that at the bail stage the Court can consider the Report / Challan submitted by Police before the Court in which an offence of a lesser degree is mentioned. In the case of *Yousuf Khan*, this Court has

granted the bail, *inter alia*, on the ground that Section 322 of PPC does not provide any punishment but payment of Diyat. Same view has been taken in another reported case of *Tariq Mehmood (supra)* with regard to Section 322 of PPC.

11. Thirdly, in *Tanveer case (ibid)*, the Honourable Supreme Court has reiterated the earlier principle, that bail in offences punishable with imprisonment of less than 10 years, be granted as a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded; this principle is fully applicable to the facts of present case.

12. In view of the above, applicant / accused Dr. Muzafar Ghanghro is admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and P.R Bond in the like amount to the satisfaction of the learned Trial Court.

13. If the Applicant/accused misuses the concession of bail then the learned Trial Court may take strict action against him in accordance with law; with a further clarification that the learned Trial Court will not be influenced by any of the observations contained hereinabove and decide the case on merits and after appreciation of the evidence.

**Judge**

*Manzoor*