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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Crl. Bail Appln. No.S-183 of 2022.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection 'A'.
2. For orders on M.A.No.1500/2022.
3. For hearing of bail application.

27.05.2022.

Mr. Ashfaque Hussain Abro, advocate, for the applicant along with applicant on bail.

Mr. Ali Anwar Kandhro, Addl. P. G.

**ORDER.**

**MUHAMAD SALEEM JESSAR-J** Through instant bail application, applicant Sajjad Ali son of Abdul Fatah Ansari, seeks pre arrest bail in Crime No.05 of 2022 registered at Police Station Ali Goharabad, for offence punishable under sections 337-A(ii), 504, PPC.

2. Facts of the prosecution case as enunciated in the F.I.R are that on 06.03.2022 at 2100 hours, complainant Ghulam Abbas Ansari, lodged F.I.R with Police Station, stating therein that complainant is residing at above address, have one Kiryana shop situated at Sami Abad Muhalla Larkana, which is running by him. One Sajjad son of Abdul Fatah Ansari R/o Mirani Nursery Muhalla near Phull Road, Larkana, who is brother-in-law of complainant and remained annoyed with him due to matrimonial dispute. On 26.01.2022, the complainant, his brother Ghulam Safeer and cousin Imran Ali son of Sher Muhammad Ansari R/o Ali Gohar Abad, Larkana, were sitting at his shop, where accused Sajjad Ali son of Abdul Fatah, came having lathi and on coming abused and caused lathi to him, which hit him on his head, then accused ran away. Then complainant got medical letter and

after treatment appeared at Police Station and lodged the F.I.R to the above effect.

3. Learned counsel for the applicants submits that the incident had occurred on 26.01.2022, whereas, F.I.R was lodged on 06.03.2022 with the delay of about one month and ten days, and no plausible explanation has been furnished by the prosecution for such an inordinate delay. He next submits that the injury attributed against accused Sajjad Ali Ansari, is he allegedly caused lathi blow to complainant Ghulam Abbas, which landed on his head. He further submits that the injuries allegedly sustained by the complainant had not been opined by the Medicolegal Officer as grievous in nature; besides there are counter cases in which both the parties, (the complainant as well as applicant are brother-in-law to each other *inter se*). He next submits that the incident is outcome of matrimonial dispute which could be resolved by the elders of their community and the offence with which they are charged does not exceed the limits of prohibitory clause of Section 497, Cr.P.C. Hence prays for confirmation of bail.

4. Learned Addl. P. G, appearing for the State submits that there are counter cases in between the parties and in both the cases the parties are claiming each other to be the aggressor, however, which one aggressor and which one was aggressed upon, is yet to be determined by the trial Court after recording evidence of prosecution witnesses, therefore, he has no objection for the confirmation of bail.

5. Heard arguments of learned counsel for the applicant and learned Addl. P. G appearing for the State and perused the material with their able assistance, as has been made available on record.

6. Admittedly, the incident is said to have taken place on 26.01.2022 and report whereof was lodged on 06.03.2022, with the

delay of about one month and ten days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The Sections applied in the F.I.R carries maximum punishment of five years thus does not exceed the limit of prohibitory clause of Section 497, Cr.P.C. The complainant himself has admitted in the F.I.R that they have matrimonial dispute with the accused, therefore, *mala fide* on the part of prosecution is established. The case is being tried by the Civil Judge & Judicial Magistrate, where-after recording evidence of prosecution witnesses, if prosecution may succeed to establish its charge against them, even then punishment of more than three years cannot be visualized. In the circumstances and in view of the dicta laid down in the case of *Muhammad Tanveer v. The State* (PLD 2017 SC 733), the case against the applicant requires further enquiry within the meaning of subsection (2) of Section 497 Cr.P.C. Consequently, the bail application is hereby allowed. Interim bail granted to the applicant on 07.4.2022 is hereby confirmed on the same terms and conditions.

Judge

M.Y.Panhwar/\*\*