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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1st Cr. Bail Appln. No. S- 39 of 2024.

Date of hearing

Order with signature of Judge.

1. For orders on office objection as flag A.
2. For hearing of bail application.

Applicant

(Asad @Asadullah) : Through Mr. Ahsan Ahmed Qureshi, Advocate a/w applicant (on bail).

The State

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

Complainant

(Muhammad Ramzan) : Present in person.

Date of hearing

: 04.3.2024.

O R D E R.

MUHAMMAD SALEEM JESSAR:- Through this application, applicant seeks his admission on pre arrest bail in Crime No.89 of 2023 of P.S Bاده for offences under Sections 337-F(v) & 34 PPC. Applicant filed anticipatory bail application before the Court of Sessions where initially he was granted interim pre arrest bail and subsequently after hearing the parties its confirmation was declined vide impugned order dated 05.01.2024, hence this application has been maintained.

2. The facts of the prosecution are already mentioned in FIR as well as memo of bail application therefore, the same are not required to be repeated here.

3. At the very outset, learned counsel for the applicant submits true copy of case diary dated 20.01.2024 issued by Incharge Civil Judge and Judicial Magistrate-II, Dokri which reveals that applicant after furnishing surety before this court has joined trial proceedings vide Criminal Case No.01 of 2023 re: State v. Asad Soomro and others, taken on record.

4. Learned counsel for the applicant contended that the role attributed to applicant is that he allegedly caused *danda* below to complainant which hit him on thumb of left hand however, the injuries allegedly sustained by him have been

declared to be punishable under Sections 337F(i) and 337-F(v) PPC which carry maximum punishment upto five years, hence same does not exceed limits of prohibitory clause of section 497 Cr.P.C. The injury allegedly sustained by the injured is on his non-vital part of the body and has not been declared to be fatal for his life. In support of his contentions, learned counsel relied upon following case laws:

1. Master Dur Muhammad and 2 others v. The State (1994 P.Cr.L.J 1769).
2. Sultan and 6 others v. The State (2018 YLR 204).
3. Abdul Hai Siddiqui and 2 others v. The State (1993 Cr.L.J 446).
4. Muhammad Afsar v. The State (1994 SCMR 2051).
5. Tariq Bashir and 5 others v. The State (PLD 1995 Supreme Court 34).

5. Learned Addl. P.G duly assisted by learned counsel for the complainant opposed the application on the ground that the applicant is named in the FIR with specific role of causing danda blow to the complainant, hence he is not entitled for the bail.

6. Heard learned counsel for the parties and perused the record.

7. Admittedly complainant happens to be real uncle of accused Asad (present applicant), Habibullah and Ali as well as brother of accused Nawab while both eye witnesses of the alleged occurrence are also brothers of complainant as well as co-accused Nawab, thus on the face of it appears to be family dispute over partition of shop. Record reflects that allegedly incident occurred on 20.11.2023 while the FIR was registered on 29.12.2023, thus there is delay of one month and 9 days in registration of FIR and no plausible explanation has been furnished by the prosecution for such an inordinate delay. In the background of previous dispute over partition of shop, false implication of present applicant can not be ruled out. Allegedly applicant/accused Asad caused danda blow to complainant which hit him on left arm and thumb which are non-vital parts of body. Besides, the injuries allegedly sustained by the injured/complainant carry maximum punishment upto five years which do not fall within the prohibitory clause of Section 497 Cr.P.C. It is also noted that complainant has booked all three real brothers (including present applicant) and their father in this case whereby he has tried to rope all male family members of same

family out of whom co-accused Habibullah and Nawab have been extended concession of pre arrest bail by the trial Court. The applicant has also joined trial proceedings and no complaint with regard to misuse of concession has been brought on record.

8. In view of the above discussion, the prosecution case against the present applicant calls for further enquiry. Resultantly instant bail application is allowed. Interim pre arrest bail already granted to the applicant on 19.01.2024 is hereby confirmed on the same terms and conditions.

9. Needless to say that observations made herein above are tentative in nature which shall not influence the mind of trial Court while deciding fate of the case.

JUDGE

shabir

Appi in D/O Matter

- 1- Fw order in MA NO. 1616/25 (Ulan)
- 2- Fw order in MA NO. 1617/25 (Shabir)

- Accountant report as flag "C"