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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Bail Appln. No. S-42 of 2024

Date of hearing	Order with signature of Judge
	1. For orders on office objections as flag A. 2. For hearing of bail application.
Applicants (Musawar Ali & another)	Through Mr. Mazhar Ali Mangan, Advocate
Complainant (Altaf Hussain)	Through Mr. Gulshan R. Dayo, Advocate
The State	Through Mr. Ali Anwar Kandho, Addl. P.G.
Date of hearing	<u>22.3.2024</u>

ORDER.

**MUHAMMAD SALEEM JESSAR-J**:- Through instant bail application, the applicants Musawar Ali and Tasawar Ali seek their admission on pre arrest bail in Crime No.02 of 2024 P.S Hyderi District Larkana under Sections 337-A(ii), A(i), F(i), 147, 148, 114, 149, 506/2 PPC. The applicants filed pre arrest bail application No.68 of 2024 before the Court of Sessions which was assigned to 4<sup>th</sup> Additional Sessions, Larkana. After hearing the parties as well as prosecutor, learned Additional Sessions Judge, Larkana has declined their request for bail. The case has been challaned which is now pending for trial before the Court of 5<sup>th</sup> Civil Judge/Judicial Magistrate, Larkana re: State v. Musawar Ali and another.

2. Learned counsel places on record certified copies of set of FIRs and case diaries as well, under cover of his statement dated 22.3.2024, taken on record.

3. Since the facts of the prosecution case are already mentioned in the FIR as well as order passed by the Court below, therefore, there is no need to reproduce the same.

4. Learned counsel submits that sister of the applicants namely Mst Naseem Khatoon is wife of one Ashfaque Hussain, son of present complainant. However, prior to registration of instant case, the civil suits filed by son of the complainant are pending adjudication against the applicants and one Mst Sajida, wife of

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applicant Tasawar Ali. As far as instant case is concerned, the role attributed to applicant Tasawar Ali is that he allegedly caused wrong side hatchet blow to complainant on his head whereas applicant Musawar has been assigned role of causing pistol but blow to complainant which landed on back of his right hand. The injury attributed to Tasawar has been declared by Medico Legal Officer to be Shajah e Mudiah which is punishable under Section 337-A(ii) PPC and the injury attributed to applicant Musawar Ali has been declared as Jurah Chyr Jaifah Damiah, punishable under Section 337 F(i) PPC and is bailable. He submits that parties are already on strained relations due to matrimonial dispute as well as civil litigation therefore, case against them requires further enquiry. In support of his contentions, he placed his reliance upon cases reported as *Khalil Ahmed Soomro and others v. The State (PLD 2017 S.C 730)* and *Ali Gohar Gopang and another v. The State (2022 MLD 1308)*.

5. Learned Addl. P.G for the State submits that though the applicants are nominated in the FIR; yet the injuries allegedly caused by them to the injured P.W are carrying punishment of five years, hence does not exceed the limits of prohibitory clause of Section 497 Cr.P.C, therefore, he does not oppose the bail application.

6. Mr. Gulshan R. Dayo, counsel for the complainant opposes the bail application on the ground that applicants have been assigned specific role of causing injuries to injured P.Ws, therefore, they are not entitled for the bail.

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

8. Admittedly the incident had occurred on 28.12.2023 whereas the FIR thereof was lodged on 07.01.2024 with delay of about 10 days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by superior Courts to be fatal for the prosecution. The parties, as is admitted by both learned counsel, are on disputed relations over matrimonial dispute as well as property. The injuries allegedly attributed to applicants have not been declared by the Medico Legal

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Officer to be detrimental to their lives nor the injuries allegedly sustained by injured are grievous in nature. Besides the injuries carry punishment upto five years, hence does not fall within ambit of prohibitory clause of Section 497 Cr.P.C. The case has been challaned and the applicants, after furnishing surety before this Court, have surrendered before the trial Court. As far as allegations leveled by the prosecution against the applicants are concerned, the prosecution has to establish its charge by way of recording evidence before the trial Court and then the trial Court has to determine the accusation against the applicants.

9. In the case of **Khalil Ahmed Soomro and others (Supra)** learned Apex Court while discussing the nature of injuries as well as malafide has granted bail to the petitioners therein by holding in Paras No.4 and 5 of said judgment which reads as under:

" 4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497 Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police.

5. Although for grant of pre-arrest bail one of the pre-conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years' imprisonment. All those aspects if are combinedly taken, may constitute element of malafide."

10. Accordingly and in view of above, case against the applicants requires further enquiry. Consequently, this bail application is hereby allowed. The interim pre arrest bail already granted to the applicants vide order dated 19.01.2024 is hereby confirmed on the same terms and conditions.



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

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~~JUDGE~~

- Application of Maltu

- or R only on MA 80915 (561-A)
- Accorded - report on flag B