

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

1st Crl. Bail Application . No. 5. 571 of 2024

Khadim @ Khadim Ali Machhi

V/S

The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar

Single/ D/B

Date of: Hearing : 01/01/2025

Date of: Order : 01/01/2025

Date of: Reasons

(a) Judgment approved for
Reporting

YES

NO

CERTIFICATE

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page
Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is
Approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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

1st Cr. Bail Appln. No.S- 571 of 2024.

Date of hearing _____ Order with signature of Judge. _____

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

Applicant : Khadim @ Khadim Ali Machhi,
through Mr. Saeed Ahmed B. Bijarani, Advocate a/w
applicant (on bail).

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

Complainant : Through Mr. Muhammad Afzal Jagirani holds brief
(Pehlwan Lashari) on behalf of Mr. Shakeel Ahmed G. Ansari
Advocate.

Date of hearing : 01.01.2025.

Date of Decision : 01.01.2025.

ORDER.

Muhammad Saleem Jessar, J.- Through this application, applicant Khadim *alias* Khadim Ali son of Ghulam Hyder, by caste Machhi, seeks his admission on pre-arrest bail in Crime No.113 of 2024, registered at P.S Karampur, for offences under Sections 337-F(v), 337-F(i), 337-H(2), 147, 148, 149, PPC. Applicant filed anticipatory bail application vide Cr. Bail Appln. No.824 of 2024 before the Court of Sessions Judge, Kashmore at Kandhkot, who after hearing the parties, turned down his request vide order dated 26.09.2024, hence this application has been maintained.

2. The facts of the prosecution case are mentioned in the memo of bail application; therefore, the same need not to be reproduced herein again.

3. Learned counsel for the applicants submits that the FIR is delayed for about 05 days without plausible explanation. He next submits that the parties are already on strained relations; besides, the applicant has been assigned the role of causing lathi blow to injured complainant Pehlwan at his leg, which shown to be carrying maximum punishment for 05 years does not attract the

prohibitory clause of Section 497, Cr.P.C, therefore, submits that the applicant may be granted pre-arrest bail.

4. Learned Addl. P.G. submits, though the applicant is nominated in the FIR; however, the injury allegedly caused by him to the complainant is on non-vital part of his body, which carries maximum punishment of five years; thus, does not exceed the limits of prohibitory clause of Section 497, Cr.P.C. Therefore, he has no objection for confirmation of interim pre-arrest bail.

5. Mr. Muhammad Afzal Jagirani holding brief on behalf of Mr. Shakeel Ahmed G. Ansari, learned Counsel for the complainant, opposes the bail application and submits that the applicant is nominated in the FIR and specific role of causing lathi injury to injured complainant Pehlwan at his leg is assigned to him, therefore, he is not entitled for concession bail.

6. Heard. Record perused.

7. Per FIR, the incident is shown to have occurred on 07.09.2024, whereas the report thereof was lodged on 12.09.2024 i.e. with the delay of about 05 days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. No doubt, the applicant is nominated in the FIR and the role of causing lathi blow to injured complainant Pehlwan is also assigned to him; however, the injuries allegedly sustained by the complainant is shown to be carrying maximum punishment upto 05 years. The case has been challaned and no complaint is brought on record against the applicant regarding misuse of concession of interim pre-arrest bail extended to him. The case is being tried by the Court of Civil Judge & Judicial Magistrate, where after recording evidence if the prosecution may succeed in establishing the charge against the accused, even then punishment of more than 03 years cannot be visualized. In the circumstances and in view of the dicta laid down by the Apex Court in the case of *Muhammad Tanveer v. The State* (PLD 2017 Supreme Court 733) the case against the applicants requires further enquiry. Apart from that, the parties, as is evident from the contents of the FIR, also appear to be on disputed terms over

matrimonial affairs, which is sufficient to believe that the prosecution has been initiated/motivated for ulterior motives and with malafide intention; hence, the basic ingredients for grant of pre-arrest bail, as has been laid down by the Hon'ble Supreme Court of Pakistan in the case of *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427) are fully attracted.

8. Consequently, instant bail application is hereby allowed. Resultantly, the interim pre-arrest bail granted to the applicant on 03.10.2024 is hereby confirmed on same terms and conditions.

9. The observations recorded above are based on tentative assessment of the material placed on record, which shall not influence the trial Court, in any manner, during the trial.

JUDGE

Qazi Tahir