

ORER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA

1ST CrI. B.A. No.S-488 of 2019

Date	Order with signature of Judge
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1. For Orders on office objections as flag A
2. For Hearing of Bail Application

10.10.2019

Mr. Shakeel Ahmed Ansari, advocate for the applicant.

Mr. Muhammad Noonari, Deputy Prosecutor General, Sindh

ORDER

Arshad Hussain Khan, J- Applicant Muhammad Ilyas has filed this application under Section 497 Cr.P.C seeking post-arrest bail in Crime No.29/2019 of Police Station, Napar Kot registered for offence under Sections 337-A(i), F(i), F(V), 114, 147, 148,149, 505 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that Hafiz Muhammad Younis lodged complaint on 19.8.2019 at 1300 hours, alleging therein that there is dispute between him and accused Ilyas in respect of landed property. On 5.8.2019 he along-with his brother Bakhshan and Muhammad Essa were going to purchase cattle, at about 06:30 pm they reached near village Gabol, where they found 02 motorcycles, on which accused Mohammad Ilyas, Ayoub, Mohammad Idrees, Tarique having lathis, Ghulam Qadir, Ghulam Mustafa having pistols were boarded, who signaled them to stop the motorcycle and accused Ayoub disclosed that there is dispute in respect of the landed property and accused Ayoub instigated other accused to cause harm to complainant upon which applicant/accused caused lathi blow

to the brother of complainant, which hit him, thereafter accused while abusing the complainant fled away from the scene. The complainant then took his injured brother to Police Station, obtained letter for treatment, after treatment, he appeared at Police Station and lodged the FIR to this effect.

3. Police during the course of investigation, arrested the applicant/accused submitted the Challan in the court of law. The bail after arrest application was filed on behalf of the applicant/accused before learned Civil Judge and Judicial Magistrate, Khanpur, where the same was dismissed on merits, hence the applicant/accused has approached this court seeking post arrest bail.

4. Learned counsel for the applicant during the course of arguments has contended that the applicant is innocent and he has been falsely implicated in the case by the complainant due to enmity in respect of landed property which is admitted by the complainant in his FIR as well. He further argued that Sections mentioned in the FIR does not fall within prohibitory clause of section 497 Cr.P.C. He further submitted that co-accused namely Muhammad Ayoub, 2. Tariq Jameel, 3. Ghulam Qadir, 4. Ghulam Mustafa have been granted bail by the learned 5th Additional Sessions Judge, Shikarpur vide order dated 30.8.2019, in the same crime, hence the applicant is also entitled for the concession of bail on the rule of consistency. It is also argued that medical evidence is contradictory to the ocular version. It is also argued that there is inordinate delay of 14 days in lodging the FIR without any plausible explanation which reflects that the complainant concocted the story to implicate innocent persons, which cannot be excluded in view of previous enmity between the parties on landed dispute which is also admitted in the FIR itself. It is also argued that grant of bail does not mean discharge of person from accusation, but only the custody is to be shifted from the jail into the hands of surety as under the

law there is no provision for compensation of accused if after termination of trial he would be declared as innocent. On all these scores, learned counsel for the applicant submits the prosecution case against the present applicant calls for further enquiry and he is entitled to the concession of bail.

5. Conversely, the learned D.P.G. opposed the arguments so advanced by the counsel for the applicant and contended that the present applicant is named in the FIR with specific role of causing lathi blows to P.W. Yahya, thus applicant/accused is not entitled for concession of bail.

6. I have heard learned Counsel for the parties and also perused the material brought on record.

7. Bare perusal of record it appears all the prosecution witnesses are closely related and their testimony cannot be taken as gospel truth more particularly when there is previous enmity between the parties on landed dispute as reflected in the FIR, therefore, in the background of previous ill will, false implication of present applicant cannot be ruled out as the enmity is double edged weapon which cuts both ways. In these circumstances, prima facie, the possible of mala fide and ulterior motives on the part of the complainant in lodging the instant FIR against the applicant/accused cannot be ruled out and as such the prosecution case against the present applicant calls for further probe. Furthermore, co-accused have been granted bail by learned trial court, thus rule of consistency is also attracted in the present case. It is pertinent to mention here that keeping the applicant behind the bar as a matter of punishment, would not serve any useful purpose, as the challan has already been submitted before the learned trial Court and present applicant has been remanded to custody, hence, he is no more required for further investigation.

8. For what has been stated above, I am of the considered view that applicant/accused has made out the case for grant

of post-arrest bail. Consequently, applicant/accused is granted post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R. bond in the like amount to the satisfaction of trial Court.

9. Needless to say, the observations made herein-in-above are tentative in nature and only for the purpose of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the Trial Court in reaching its decision on merits of the case.

Sd/-
(Arshad Hussian Khan, J)