

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA*****Cr. Bail Application No.S-627 of 2018***

**Applicant:** Muhammad Mithal @ Mitho son of Bangul,  
in person.

**The State:** Mr. Sharafuddin Kaanhar, APG.

**Date of hearing:** 24.12.2018

**Date of decision:** 24.12.2018

**ORDER**

**KHADIM HUSSAIN TUNIO, J-** Through instant criminal bail application, under Sections 498, 498-A, Cr.P.C, the applicant Muhammad Mithal seeks pre-arrest bail in Crime No. 60/2018 of P.S. Karampur, District Kashmore @ Kandhkot, under Sections 337-F(v), 504, 148 and 149 PPC. The applicant approached the learned trial Court with same plea which was declined by the learned 1<sup>st</sup> Additional Sessions Judge, Kandhkot, vide order dated 23.11.2018.

2. It is alleged by the complainant in the FIR that buffaloes of the complainant were stolen two years prior. He approached for return of the same multiple times, but was kept on false hopes. On 29.09.2018, the complainant along with his brother Lakhmir and maternal uncle Mehboob Ali Jaffrey were proceeding to Karampur on motorcycle. At about 09:00 AM, when they reached near Iqbal Khan Bijarani curve, they saw and identified accused Mithal @ Mitho, Hussain Bux both having lathis, Ghulam Rasool armed with a gun, Abdul Nabi armed with lathis, all by caste Jaffrey along with two unidentified accomplices who can be identified if seen again. The complainant stopped the motorcycle, alighted from it identified the accused. The accused Mithal challenged them as to

why they demanded amount from them hence they will not be spared. Meanwhile, accused Mithal @ Mitho caused lathi blows to the complainant which hit him at his left arm. The complainant raised cries, while the other accused persons used abusive language. Upon which they caught the attention of the people of the locality. Upon seeing them, all accused fled away towards northern side. Thereafter, the complainant appeared to Police Station and lodged the FIR.

3. The applicant present in person reiterates the same grounds agitated in the memo of bail application.

4. Conversely, learned APG for the State has half-heartedly opposed the bail plea.

5. Admittedly, parties are disputed with each other; that there is six days delay in lodging of FIR, which has not been explained by the complainant; that PWs are related and interested; that none from the public has been cited as witness; that injury attributed to the applicant is punishable upto 5 years and does not fall within the prohibitory clause of Section 497 Cr.P.C.

6. In the case of ***Muhammad Tanveer v. The State (PLD 2017 SC 733)***, Honourable Supreme Court of Pakistan has observed as under:-

*“Although for grant of pre-arrest bail on 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 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 deducted and inferred from the facts and circumstances of the case and if some events-hints to that effects 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 combindly taken, may constitute element of mala fide.”*

7. In view of above discussion, it appears that applicant has made out his case for grant of pre-arrest bail, therefore, interim pre-arrest bail already granted to the applicant vide order dated 06.12.2018 is confirmed on the same terms and conditions.

8. Needless to mention here that whatever observed herein-above is tentative in nature, which in no manner shall prejudice the case of either party at trial.

**JUDGE**