

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Misc. Application No. S-137 of 2024

(Roshan Ali Gadhi Vs. The State & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on MA No. 1355/2024. (U/A)
2. For Orders on office objections.
3. For Orders on MA No. 1356/2024 (Ex./A)
4. For hearing of main case.
5. For Orders on MA No. 1357/2024 (Stay)

01-04-2024.

Mr. Sheeraz Fazal, advocate for the applicant.

1. Granted.
2. Over ruled.
3. Granted subject to all just legal exceptions.

4&5. The facts in brief necessary for disposal of instant CrI. Misc. Application are that the applicant with rest of the culprits after having formed an unlawful assembly in prosecution of its common object beside causing hatchet injuries to PW Ghulam Rasool with intention to commit his murder, committed murder of Ashiq Ali by causing him hatchet injuries and then went away by making aerial firing to create harassment, for that the present case was registered at the instance of private respondents; cognizance whereof on police report under section 173 Cr.P.C has been taken by learned Judicial Magistrate Sobhodoro vide order dated 04-03-2024, which is impugned by the applicant before this Court by way of instant CrI. Misc. Application u/s 561-A Cr.P.C.

It is contended by learned counsel for the applicant that the applicant and his brother Gulshan once were declared innocent and on reinvestigation have been joined as an accused by I.O/SIP Rab Nawaz with ulterior motives on the basis of dishonest investigation and such aspect of the case has been lost sight of by learned trial Magistrate, who has taken cognizance of the offence by way of impugned order, which is

illegal and is liable to be set aside with direction to the police to conduct further investigation.

Heard arguments perused the record.

The applicant is named in promptly lodged FIR with specific allegation that he has caused hatchet injury to the deceased on his neck. Whatever is stated by the private respondent in her FIR, takes support from ancillary evidence; once it was disbelieved and on reinvestigation was believed by the police by joining the applicant and his brother Gulshan as an accused; probably it was done by taking into consideration the well settled principle of law that the burden to make out the case for cognizance is light and it could not equated with burden to prove the case at trial. In that situation, learned trial Magistrate while taking cognizance against the applicant by way of impugned order has committed no wrong which may justify this Court to interfere with the same, by way of instant Crl. Misc. Application, it is dismissed in limine along with listed application directing the applicant to prove his innocence by joining the trial, if so is advised to him.

Judge

Nasim/P.A