

## ORDER SHEET

### IN THE HIGH COURT OF SINDH BENCH AT SUKKUR Cr. Bail Appln. No. S- 459 of 2024

| Date of hearing | Order with signature of Judge |
|-----------------|-------------------------------|
|-----------------|-------------------------------|

Applicants : 1. Faheemuddin son of Muhammad Salar  
2. Ghulam Mujtaba son of Mehar Khan  
through Mr. Muhammad Iqbal Memon, Adv.

The State through Syed Sardar Ali Shah, Additional P.G

Complainant : Khair Muhammad present in person.

Date of Hearing: 17.10.2024

Date of order: 17.10.2024

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### ORDER.

**MUHAMMAD SALEEM JESSAR, J.** Through this bail application, applicants Faheemuddin and 2) Ghulam Mujtaba seek their admission on pre-arrest bail in crime No. 29/2024 of Police Station Mithiani under sections 379, 504, 447 PPC. The case has been chalalned which is now pending trial before the Court of 2<sup>nd</sup> Civil Judge/Judicial Magistrate (MCTC) Naushehro Feroze vide criminal case No. 29/2024 Re. State vs. Faheemuddin and others. The accused preferred their bail plea bearing No.1176/2024 before the Court of learned Sessions Judge, Naushehro Feroze. After due notice and hearing the parties, bail plea of applicants was declined by way of order dated 27.06.2024; however, bail of co-accused Makkan was confirmed by same order hence this application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for applicants submits that FIR is delayed for about 40 days for which no plausible explanation has been furnished by the prosecution. He next submits that the punishment provided by the law for the offences with which accused charged are carrying maximum punishment of seven years, therefore, does not exceed the limits of prohibitory clause of section 497 Cr.P.C. In the last he submits that co-accused Makkan having similar role has been granted pre-arrest bail, therefore, he prayed for grant of bail on the ground of parity.

4. Learned Additional P.G does not oppose the bail application on the ground that parties are relatives to each other interse, besides civil litigation is pending adjudication between them. Moreover, the offence with which they have been charge sheeted does not exceed the limits of prohibitory clause of section 497 Cr.P.C. In support of his contention he refers the case of Khizar Hayat vs. The State and others (2024 SCMR 1605), however, he records his no objection.

5. Complainant present in person, opposes the bail application and submits that he is still under threat at the hands of accused, therefore, prays for dismissal of bail application.

6. Heard arguments.

7. Admittedly the incident is said to have occurred on 14.04.2024 whereas the report thereof was lodged on 23.05.2024 i.e the delay of about 40 days though the distance between Police station and place of occurrence is only 11/12 kilometers; however, the prosecution has failed to furnish plausible explanation for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution.

8. No doubt both applicants are nominated in FIR, yet role attributed to them that they allegedly taken away wheat grain along with its straws besides have allegedly encroached upon land claimed to be owned by the complainant. The complainant and others had filed F.C Suit No. 33/2021 before the Court of Senior Civil Judge-II Naushehro Feroze (Re. Khair Muhammad and others vs. Government of Sindh and others for declaration, possession, mesne profits and permanent injunction; however, it was dismissed on 28.09.2022 on the ground that complainant/plaintiff failed to prove their title over the land in dispute

(Photocopy of Decree dated 28.09.2022 is taken on record). Although, complainant/plaintiff party had maintained civil appeal before learned District Judge concerned yet it is still pending adjudication. Since the parties are relatives ineterse besides are entangled with each other over landed dispute, therefore, claim of complainant as well as accusation against the accused are yet to be established by the prosecution and then the trial Court has to determine it after recording evidence of either side. In view of long standing enmity between the parties over landed dispute, the basic ingredients for grant of pre-arrest bail as has been enshrined by Hon'ble Supreme Court of Pakistan in the case of Rana Muhammad Arshad vs. Muhammad Rafique and another (PLD 2009 Supreme Court 427) are fully attracted in this case. The case is being tried by the Court of Civil Judge & Judicial Magistrate, whereafter recording of evidence, if the prosecution may succeed to prove its charge against the accused even then punishment of more than three years cannot be visualized. Reliance can be placed upon the case of Manzoor Ali alias Mumtaz vs. The State (2001 P.Cr.L.J 344). In the circumstances and in view of dicta laid down by Hon'ble Supreme Court of Pakistan in case of Muhammad Tanveer vs. The State another (PLD 2017 Supreme Court 733) the case of applicants requires further enquiry as is embodied under section 497(2) Cr.P.C.

9. In view of discussion whatever has been made hereinabove, the applicants have made out a good prima facie case for their admission to pre-arrest bail. Consequently, instant bail application is allowed. Resultantly, interim pre-arrest bail granted to them by this Court on 08.07.2024 is hereby confirmed on same terms and conditions.

10. Needless to mention that the observations made hereinabove are tentative in nature and would not influence to learned Trial Court while deciding case of the applicants on merits.

11. The aforesaid bail application stands disposed of in the above terms.

JUDGE

Irfan/PA