

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Crl. Bail Appln. No.S-175 of 2022.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

27.05.2022.

M/S Asif Ali Abdul Razak Soomro & Jai Kumar, advocates,
for the applicants along with applicants on bail.

Mr. Ali Anwar Kandhro, Addl. P. G.

ORDER.

MUHAMAD SALEEM JESSAR-J Through instant bail application, applicants Ghulam Abbas & Ghulam Sagheer, both sons of Ghulam Shabir Ansari, seek pre arrest bail in Crime No.09 of 2022 registered at Police Station Ali Goharabad, for offence punishable under sections 337-A(i), 337-F(v), 34, PPC.

2. Facts of the prosecution case as enunciated in the F.I.R are that on 26.01.2022, complainant Sajjad Ali reported at Police Station Ali Goharabad, alleging therein that he used to reside at above mentioned address and one Ghulam Abbas Ansari, who is his brother-in-law, was annoyed over domestic/family matters and on 26.01.2022, he along with his friends, namely, Ali Nawaz son of Muhammad Jurial Shabrani Chandio, 2.Tanveer son of Ali Nawaz Shabrani Chandio R/o Murad Wahan Larkana, were going towards house from the city and when reached at common street near shop of accused Ghulam Abbas Ansari, at about 12:30 p.m, then saw and identified everyone Ghulam Abbas son of Ghulam Shabir having lathi, 2.Sagheer son of Ghulam Shabir Ansari having lathi, R/o Samiabad Muhalla Larkana, it is further alleged that they asked him that why you come here and in meantime accused Ghulam Abbas Ansari caused lathi blows on his

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hand which hit him on lady-finger and blood was oozing, while accused Sagheer Ansari, caused lathi blows to his head and blood was started as also they both caused kicks and fist blows, thereafter, they went away, it is further alleged that he went to Police Station for first-aid and after obtaining letter has approached the CMC Hospital Larkana and was busy in treatment and thereafter he appeared at PS and lodged the F.I.R to the above effect.

3. Learned counsel for the applicants submits that the incident had occurred on 26.01.2022, whereas, F.I.R was lodged on 23.03.2022 with the delay of about two months and no plausible explanation has been furnished by the prosecution for such an inordinate delay. He next submits that the injury attributed against accused Ghulam Abbas, who allegedly caused lathi blow to complainant Sajjad Ali, which landed on his little finger while accused Ghulam Sagheer caused lathi blow to him, which landed on his hand. He further submits that the injuries allegedly sustained by the complainant had not been opined by the Medicolegal Officer as grievous in nature; besides there are counter cases in which both the parties, the complainant as well as applicants are brother-in-law to each other *inter se*. He next submits that the incident is outcome of matrimonial dispute which could be resolved by the elders of their community and the offence with which they are charged does not exceed the limits of prohibitory clause of Section 497, Cr.P.C. Hence prays for confirmation of bail.

4. Learned Addl. P. G, appearing for the State submits that there are counter cases in between the parties and in both the cases the parties are claiming each other to be the aggressor which is yet to be determined by the trial Court after recording evidence of prosecution witnesses, therefore, he has no objection for the confirmation of bail.

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5. Heard arguments of learned counsel for the applicants and learned Addl. P. Q appearing for the State and perused the material available on record with their assistance.

6. Admittedly, the incident is said to have taken place on 26.01.2022 and report whereof was lodged on 23.03.2022, with the delay of about two months and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The Sections applied in the F.I.R carries maximum punishment of five years thus does not exceed the limit of prohibitory clause of Section 497, Cr.P.C. The complainant himself has admitted in the F.I.R that they have matrimonial dispute with the accused, therefore, *mala fide* on the part of prosecution is established. The case is being tried by the Civil Judge & Judicial Magistrate, where-after recording evidence of prosecution witnesses, if prosecution may succeed to establish its charge against them, even then punishment of more than three years cannot be visualized. In the circumstances and in view of the dicta laid down in the case of *Muhammad Tanveer v. The State (PLD 2017 SC 733)*, the case against the applicants requires further enquiry within the meaning of subsection (2) of Section 497 Cr.P.C. Consequently, the bail application is hereby allowed. Interim bail granted to the applicants on 06.4.2022 is hereby confirmed on the same terms and conditions

M.Y.Panhwar/**