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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No. S- 43 of 2022.

| Date | Order with signature of Hon'ble Judge |
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1. For orders on office objection as flag A.
2. For hearing of bail application.

27.5.2022.

Mr. Ahsan Ahmed Qureshi, advocate for the applicant.

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

O R D E R.

MUHAMMAD SALEEM JESSAR-J.:-Through this application, applicant Khadim Unar seeks pre arrest bail in Crime NO. 01 of 2022 registered with P.S A-Section Thul for offence under Section 337-A(i), 337 F(i), 337 F(v), 506/2 and 34 PPC.

Learned counsel submits that role assigned to applicant Khadim Hussain is that he allegedly caused lathi blows to the complainant which landed on his arm as well as leg and both injuries have been declared by the Medico Legal Officer to be falling under Section 337-F(i) and F(v) PPC and carry punishment upto five years. He next submits, indeed no such incident occurred but complainant in order to exert illegal pressure upon accused has managed instant case in collusion with the Medico Legal Officer. He therefore, submits that the applicant has challenged the Medico Legal Certificate before Special Medical Board Larkana where the injured /complainant did not appear and the members of the board have unanimously decided that the medical certificate issued by Dr. Nasrullah Khoso in favour of complainant injured Nisar Ahmed be kept in abeyance. In support of his contentions he places on record a copy of board duly signed by its members, taken on record. He submits that malice on the part of prosecution is available therefore, bail may be confirmed. In support of his contentions he places reliance on case of Master Dur Muhammad and 2 others v. The State (1994 P.Cr. L. J 1769) and Muhammad Afsar vs. The State (1994 SCMR 2051).

Learned Addl P.G appearing for the State opposed the bail application on the ground that applicant is nominated in the FIR besides he has been assigned specific role of causing lathi injury to Complainant therefore, he is not entitled for the bail. He; however, does not controvert to the fact that FIR is delayed for about four days and the punishment provided by the law for the sections applied in the FIR does not exceed the limits of prohibitory clause of Section 497 Cr.P.C.

Heard arguments and record perused. Admittedly the incident is said to have taken place on 30.12.2021 whereas the FIR was lodged on 03.01.2022 thus there is delay of about four days and no explanation is furnished by the prosecution for such an inordinate delay. Role attributed to the applicant is that he allegedly caused lathi blows to the complainant which landed on his right arm and left leg which are non-vital parts of his body and even Medico Legal Certificate issued by the MLO concerned did not show whether same were detrimental to his life or other wise. Case is being tried by Court of learned Judicial Magistrate where after recording evidence of the parties if prosecution may succeed to prove charge against him, even then punishment of more than 3 years can not be visualized. The accusation against the accused is yet to be determined by the trial Court after recording evidence of the prosecution witnesses.

In the circumstances and in view of the case law relied upon by the counsel for the applicant and dicta laid down by the honourable Supreme Court of Pakistan in the case of Muhammad Taveer vs. The State and another (PID 2017 S.C 733), the prosecution case against the applicant requires further enquiry. Consequently bail application is allowed. Interim pre arrest bail already granted to the applicant on 25.01.2022 is hereby confirmed on the same terms and conditions.

JUDGE